

CHILD CARE MARKETING TERMS AND CONDITIONS

In order to become a user of any Child Care Marketing services, you must agree to the following terms and conditions. By using our services, you agree to these terms & conditions. These services are provided by Child Care Marketing (a division of GrowOnline Pty Ltd as trustee for the GrowOnline Trust ABN 41 641 962 561). Your agreement to these Terms and Conditions (the "Terms") shall be indicated to us by signing the Child Care Marketing Services Contract or use of any Child Care Marketing services, whichever occurs first. You should review these Terms carefully and immediately cease using our services if you do not agree to these Terms.

Child Care Marketing may change the Terms & Conditions at any time and by continuing to use our services you agree to the latest terms and conditions. Details of our current terms are available at ChildCareMarketing.com.au/terms-and-conditions/

Child Care Marketing may set up hosting on Web Hosting Servers on your behalf with leading Web Hosting companies such as Go Daddy. You can access separate terms and conditions from those Web Hosting Services for that hosting service which you will need to agree to, upon commencement of hosting services.

The following terms of business apply to any or all of the domain name registration, Web site hosting, email, spam and virus protection, Search Engine Optimisation, Social Media and Secure Web Page services to be provided by Child Care Marketing to you from time to time, as well as any services provided by us under any our Web Hosting Servers Services and individually Service).

Certain terms and conditions will not apply to you if you have not engaged Child Care Marketing for those particular services.

1. Definitions

1.1. Defined Terms

In these Terms:

- (a) 'us', 'we' and 'our' is a reference to Child Care Marketing .
- (b) You means the Client.
- (c) Server means the computer server equipment operated by the Web Hosting Server provider in connection with the provision of the Services.
- (d) Web Site means the area on the Server allocated by Web Hosting Service Provider to you for use by you as a site on the Internet.

- (e) Secure Web Page means the Web page operated and located on the Server which allows you to collect credit card details in a means that is difficult for other people to view the page when it is loaded, because the page is encrypted.
- (f) Search Engine Optimisation means any service which is designed to assist your Web Site gain a higher listing in the Search Engine results.
- (g) Privacy Laws means all applicable laws relating to the subject matter of privacy, including the Privacy Act 1988 (Cth) and the Privacy Regulation 2013 (Cth).
- (h) Confidential Information means all information and documentation of the Client whether disclosed to or accessed by us in connection with this Agreement, including:
 - (i) with respect to the Client:
 - (A) all the Client's data, the Client's intellectual property and all other information of the Client or its clients, providers, suppliers, contractors and other third parties doing business with the Client; and
 - (B) any information developed by reference to or use of the Client's information.
 - (i) Brand Guidelines means the Client's branding and intellectual property guidelines.

2. Specific Terms and Conditions for use of our Services

2.1. Website hosting/email/secure webpage/virus protection

Please see Hosting terms and conditions regarding Hosting Services.

- (a) You are responsible for sending mail in accordance with any relevant legislation, including but not limited to the Spam Act 2003 (Cth) and for sending the same in a secure manner. We will take all reasonable steps to ensure accurate and prompt routing of messages but we will not accept any liability for non-receipt or misrouting or any other failure of email except where we have been negligent. In the event of deliberate transmission of unsolicited commercial email (UCE), Child Care Marketing reserves its right to terminate services without prior notification.
- (b) Both parties warrant, undertake and agree that:
 - (i) they will keep secure any identification, password and other confidential information relating to the Client's account; and
 - (ii) either party will notify the other party immediately of any known or suspected unauthorised use of the Client's account, or any known or suspected breach of security, including loss, theft or unauthorised disclosure of the Client's password information.

2.2. Search engine optimisation services

- (a) Rankings and Page Rank Disclaimer: Child Care Marketing may provide information on business strategies, search engine strategies and other business advice that, regardless of our results and experience, may not produce the same results (or any results) for you.
- (b) We make absolutely no guarantee, expressed or implied that by following the advice below you will make any money or improve current profits, increase page rank, increase search engine rankings.
- (c) There are multiple factors and variables that come into play regarding any given business and the competitive landscape. Primarily, results will depend on the nature of the product or business model, the conditions of the marketplace, the experience of the individual, and situations and elements that are beyond your control. As with any business endeavour, you assume all risk related to investment and money based on your own discretion and at your own potential expense.
- (d) You further agree that our company cannot be held responsible in any way for the success or failure of your business as a result of the information presented below. It is your responsibility to conduct your own due diligence regarding the safe and successful operation of your business if you intend to apply any of our information in any way to your business operations.
- (e) In summary, you understand that we make absolutely no guarantees regarding search engine rankings as a result of applying this information, as well as the fact that you are solely responsible for the results of any action taken on your part as a result of this information.

2.3. Advertising services

- (a) Any content we produce for you must be approved in writing by email by you prior to the content being published.
- (b) Whilst we will try to utilise your monthly advertising budget, we do not warrant that this will always be possible, and in the event of a shortfall in the use of your monthly advertising budget in any one month, you agree to our increasing future monthly budgets to compensate only.
- (c) Your monthly advertising budget is spent with media publishing companies such as Google, Facebook, LinkedIn etc. as advised to you in writing by email and in our strategy documents. As considerable work and expertise goes into purchasing this media in the most cost effective manner on your behalf – a media buying fee (media fee) is applied to the purchase of all media. This media fee may vary from time to time dependent upon the level of media buying efficiency. The media spend including all media fees are payable monthly in advance for the period of the contract – irrespective of whether your monthly advertising budget is fully utilised or not.

(d) Any partially spent monthly budget can be used in following months, however you will not be entitled to any refund, nor will you be entitled set off any partially spent monthly budgets against future payments owing to us.

(e) The Child Care Marketing Campaign Management fee is payable monthly in advance for the period of the contract – irrespective of whether your monthly advertising budget is fully utilised or not.

(f) Whilst we will try to improve your business exposure, we cannot be responsible for nor do we warrant that the provision of search engine advertising services will either increase third party traffic to your Web Site or that such traffic will increase business sales or enquiries.

(f) Standard summary and detailed reports on performance will be provided to you in the form of Google Data Studio dashboard reports – no further detailed reports or any further access to our systems will be provided.

3. Mutual Obligations

Both parties agree not to render or use the Services:

- (a) in a manner contrary to these Terms;
- (b) to carry out any activity or send or receive any material which is fraudulent, technically harmful (such as computer viruses, denial of service attacks, sending of unsolicited email, worms, Trojan horses or malicious software), criminal, threatening, offensive, indecent, defamatory, in contempt of court or in breach of any third party rights including but not limited to copyright and privacy;
- (c) for a purpose for which it was not designed or intended to be used;
- (d) to violate any third party's rights, including any breach of intellectual property, right of privacy, right of publicity or any other intellectual property or proprietary right;
- (e) to threaten, incite, stalk, harm or harass others including to promote bigotry or discrimination; or
- (f) to violate any applicable law.

4. Our Obligations

We agree to:

- (a) comply with the Client's instructions in relation to the provision of services under this agreement;

- (b) comply with any applicable intellectual property and copyright law relevant to this agreement;
- (c) perform and deliver the services with due care and skill and in full compliance with the laws of the state in which the services are performed and the laws of the Commonwealth of Australia;
- (d) ensure that the services provided to the Client are rendered to a standard reasonably expected by the Client and comply with the Client's Brand Guidelines;
- (e) comply with the Privacy Laws in relation to this agreement. We understand the Client's obligations under Privacy Laws and we must not (either by act or omission) contravene any such laws or otherwise created any exposure or cause the Client to breach any such laws;
- (g) not sell or transfer any contact details which result from leads from this agreement. All such contact details must be passed on to the Client; or
- (h) hold all Confidential Information relating to the Client in strict confidence, except as permitted by this Agreement, we must not disclose, publish, release, transfer or otherwise make available Confidential Information of, or obtained from the Client in any form to, or for the use or benefit of, any person or entity without the Client's consent. The duty of confidentiality applies for the term of this Agreement and for seven (7) years from the termination of this Agreement.
We must:
 - (i) in the event this Agreement is terminated, destroy the Confidential Information we received during the performance of this Agreement, including copies and digital or other documents produced on the basis of the Confidential Information, or return to the Client;
 - (j) promptly notify the Client of any unauthorized possession, use or knowledge, or attempt thereof, of the Client's Confidential Information by any person or entity that may become known to such party;
 - (k) promptly furnish to the Client full details of the unauthorized possession, use or knowledge, or attempt thereof, and assist the Client in investigating or preventing the recurrence of any unauthorized possession, use or knowledge, or attempt thereof, of Confidential Information;
 - (l) cooperate with the Client in any litigation and investigation against third parties deemed necessary by the other party to protect its proprietary rights; and
 - (m) promptly use our best efforts to prevent a recurrence of any such unauthorized possession, use or knowledge, or attempt thereof, of Confidential Information.

5. General Terms and Conditions

5.1. Application of General Terms and Conditions

The following terms and conditions apply to provision of all Services, including the registration of sub-domains

5.2. Termination

- (a) We may terminate this agreement forthwith if you fail to pay any sums due to us as they fall due.
- (b) Either party may terminate this agreement immediately, upon giving written notice to the other party, if:
 - (i) the other party breaches any of these terms and conditions;
 - (ii) the other party goes into liquidation; or
 - (iii) the other party is a person and is declared bankrupt.
- (c) You are not able to terminate your agreement with Child Care Marketing before the six (6) month minimum term, without Child Care Marketing requiring payment in full, unless we have breached this agreement or if the parties otherwise agree in writing.
- (d) If you wish to terminate your account with Child Care Marketing after the minimum term, you must do so by providing notice in writing with 30 days' notice, otherwise your account will be automatically renewed on a recurring monthly basis – a one month's cancellation fee (comprising the value of the last months' invoices) is charged.
- (e) The initial minimum term of any advertising program is six months unless agreed to otherwise.

5.3. Payment

- (a) All monthly charges are payable on the due date in advance of the monthly service on a date that will enable clearance of all funds by commencement of the new month.
- (b) The provision by us of the Services is contingent upon our having received the monthly payment in full in advance from you in respect of the relevant Services.
- (c) Without prejudice to our other rights and remedies under this agreement, if any sum payable is not paid on or before the due date, we reserve the right, at our sole discretion, to suspend the provision of Services to you – in such a case your monthly fee will remain payable.

(d) Upon provision of a credit card account, you give us authorisation to automatically debit your credit card for all charges on issuance of a valid invoice but we agree to immediately cancel this debit authority if we receive a written request from you.

5.4. Exclusion and limitation of liability

(a) To the full extent permitted by law we hereby exclude all conditions and warranties not expressly set out herein.

Important note:

(b) In the event that this agreement constitutes a supply of goods or services to a consumer as defined in the Australian Consumer Law or any other national, State or Territory legislation (the Acts) nothing contained in this agreement excludes, restricts or modifies any condition, warranty or other obligation in relation to this agreement.

5.5. Severability

If any clause of these terms and conditions is held to be invalid or unenforceable in whole or in part, the invalid or unenforceable wording shall be deemed to be omitted.

5.6. Assignment

The benefit of this agreement may be assigned by us, but not our obligations to you - to do that, you agree that we may request consent from you in writing, such consent to not be unreasonably withheld. You may transfer this agreement provided that you give us written notice (setting out the details of the assignee).

5.7. Change to terms on renewal

We may change the terms and conditions of this Agreement at any time as long as we notify you in writing by email with a link to the current terms and conditions. Details of our current terms are available at www.ChildCareMarketing.com.au.

5.8. Entire agreement

Except as provided above, no variation may be made to the contract unless it is in writing and signed by authorised representatives of you and Child Care Marketing .

5.9. Governing law

This agreement shall be governed by the laws in force in the state of Australia in which the client's business is located. Both parties hereby submit to the exclusive jurisdiction of the Courts of that State.

6. Website and digital content Development Terms and Conditions

We will always do our best to fulfil your needs and meet your goals, but sometimes it is best to have a few things written down so that we both know what is what, who should do what and what happens if stuff goes wrong. In this contract, you will not find complicated legal terms or long passages of unreadable text. We have no desire to trick you into signing something that you might later regret. We do want what is best for the safety of both parties, now and in the future.

In short,

You as an authorised representative are hiring us, Child Care Marketing to undertake consulting, design or digital marketing services. Both the scope and budget are outlined in our proposal.

What Do Both Parties Agree To Do?

As our customer, you have the power and ability to enter into this contract on behalf of your company or organisation. You agree to provide us with everything that we will need to complete the project – including text, images and other information – as and when we need it and in the format we ask for. You agree to review our work, provide feedback and approval in a timely manner, too. Deadlines work two ways and you'll also be bound by any dates that we set together. You also agree to stick to the payment schedule set out in this proposal. Non-payment will result in a termination of all services.

We have the experience and ability to perform the services you need from us and we will carry them out in a professional and timely manner. Along the way, we will endeavour to meet all the deadlines set but we can't be responsible for a missed launch date or a deadline if you have been late in supplying materials or have not approved or signed off our work on time at any stage. On top of this, we'll also maintain the confidentiality of any information that you give us.

Design

If we are designing your application, we'll create designs for the look-and-feel, layout and functionality of your website. This contract includes one main design plus the opportunity for you to make up to two rounds of revisions. If you're not happy with the designs at this stage, you can cancel this contract with no additional payments above the payments already made or continue to commission us to make further design revisions at our standard design rates. Note that if the project is cancelled, no amount of payments are refundable.

HTML and CSS Layout Templates

- If the project includes HTML and CSS templates, we'll develop these using valid HTML and CSS codes. The environment, functionality and capabilities of web browsers and devices change regularly and our approach is to look forward, not back. With that in mind, we will test all our markup and CSS in current versions of all major desktop browsers to ensure that we make the most from them. Users of older or less capable browsers or devices will experience a design that is appropriate to the capabilities of their software.
- We will also test that these templates perform well on Apple's iPad. However, we will not test on old, outdated or obsolete browsers as we cannot always predict their behaviour and our designs are more focused in catering to current and future platforms.
- Some examples of browsers we do not cater to are Microsoft Internet Explorer, previous versions of Apple's Safari, Mozilla Firefox or Opera, unless otherwise specified. If you need us to consider these older browsers, we will charge you at our standard Old Browser Rate for any necessary additional design work, development and testing.

Text Content

We may have written a hundreds of blog posts and websites copy. However, writing or inputting any text copy is not part of our standard service, unless we specified it in the original estimate. We'll be happy to help, though! Should you require us to write blogs or any additional texts to your website, we will charge you at our standard copywriting or content input rate, on top of the estimate.

Photographs

You will supply us with photos in digital format. If you choose to buy stock images, we'll be happy to suggest vendors of stock photography. Our designers are skilled at picking quality images to complement their designs. If you want us to take care of stock image selection, we can search, purchase, and manage the rights of usage. We do charge a markup in our stock image budget to cover the time searching for the perfect image.

Changes and Revisions

We know from plenty of experience that fixed-price contracts are rarely beneficial to you, as they often limit you to your first idea about how something should look, or how it might work. We don't want to limit either your options or your opportunities to change your mind. The project fees included in this document are based on the estimated amount of work needed to accomplish everything that you have told us you want to achieve.

If you do want to change your mind, add extra pages or templates or even add new functionality, by all means you can. However, you will be charged accordingly and these additional costs will need to be agreed to before the extra work commences. As this additional work will surely affect initial deadlines, target dates will be moved accordingly. Trust that we will be upfront about all of this, if and when it happens, to make sure we're all on the same page before proceeding. We may also ask you to put requests in writing so we can keep track of changes. If the nature or functions of the project change significantly throughout the process, we reserve the right to deem the current project cancelled. At this point, you will pay us in full for all the work we have done and may commission us to complete the new project based on the new requirements. This will require a new quote and contract.

Website Management

Like every business asset, your website needs to be maintained. This involves regular updates, security scans, website backups, and so much more. Some clients have the skills, resources, and time to achieve this in house. For those who don't, we do offer a range of website management services as specified in the proposal. All plans have access to our technical support desk to help you get the most out of your site. Our support tickets are actioned by our most trusted developers to ensure that your site remains active and working as it should. As awesome as they are, they are not experts on marketing, IT or design. So in some cases, they might pass on your ticket to your project manager. We will both come up with ideas along the way that make your website more effective. They don't all cost extra or take longer to do.

Non-Website Management Customers Technical Support

You may already have professional website hosting. You might even manage that hosting in-house. If that's the case, great! We will charge you a one-off fee for installing your site on your server, plus any additional integrations such as Google Analytics. Our Technical Support desk is open for all previous clients including updates to, and ad hoc management of website, plus any support issues that arise. Work completed will be charged on an hourly rate.

Limited Liability

We can't guarantee that the functions contained in any web page templates or in a completed website will always be error-free and so we can't be liable to you or any third party for damages, including lost profits, lost savings or other incidental, consequential or special damages arising out of the operation of or inability to operate this website and any other web pages, even if you have advised us of the possibilities of such damages.

Confidentiality

You and Child Care Marketing both agree to respect and keep each other's trade practices, trademarks, proprietary information, and intellectual property confidential.

Copyrights

You guarantee to us that any elements of text, graphics, photos, designs, trademarks, or other artwork that you provide us for inclusion in the website are either owned by your good selves or that you have permission to use them.

When we receive your final payment, copyright is automatically assigned as follows:

- You own the graphics and other visual elements that we create for you for this project.
- We'll give you a copy of all files and you should store them really safely as we are not required to keep them or provide any native source files we used to make them.
- You also own text content, photographs and other data you provided, unless someone else owns them.
- We own the markup, CSS and other codes and we license it to you for use on this project only.
- We love to show off our work and share what we have learned to other people, so we reserve the right to display and link to your completed project as part of our portfolio and to write about the project on websites, social media, in magazine / news articles and in books about web design.

Indemnification

You (as an indemnifying party) shall indemnify Child Care Marketing (as an indemnified party) against all losses and expenses arising out of any proceeding:

- brought by a third party, and
- arising out of Clients' breach of its obligations, representations, warranties, or covenants under this agreement.

Disputes

Any dispute or difference whatsoever arising out of or relating to this agreement shall be submitted to mediation in accordance with, and subject to, Resolution Institute Mediation Rules.

If the dispute or difference is not settled within 30 days of referral to mediation (unless such period is extended by agreement of the parties), it shall be and is hereby submitted to arbitration in accordance with, and subject to, Resolution Institute Arbitration Rules. Notwithstanding the existence of a dispute or difference each party shall continue to perform the agreement.

Unless the parties agree upon an arbitrator, either party may request a nomination from the Chair of Resolution Institute.