

## Definitions

### 1. In these terms & conditions

**“Kandeshop”**: Kandeshop Limited registered in England and Wales with company number 06924854

**“Business day”**: (a day other than, Saturday, Sunday, or Public Holidays) where the banks in London are open for business.

**“Keywords”** Means words which are used within your PPC campaign, or Meta Tags on your website to enable search engines to locate your advert or web page.

**“Monthly Charge”**: The monthly fee payable by the Client to Kandeshop as described in the proposal considering the provision of services to the Client for services in the following calendar month.

**“Order”**: The declaration for services by the Client, as set out in the proposal, accepted by Kandeshop.

**“Order Confirmation”**: Means a document or electronic communication which we send to you to confirm agreement of your purchase of one or more services with us.

**“Payment Date”**: The date in which payment for services from the Client is expected. This will be the first of the month unless an alternative date is specified in the proposal.

**“Pay Per Click” or “PPC”**: Means the method of advertising which we undertake for you with one or more of our selected providers. Adverts are paid for on a click by click basis determined by a preset daily budget, billed monthly.

**“Charges”**: The monetary charges payable by the Client to Kandeshop for the supply of services in accordance with the charges and payment section of this document.

**“Conditions”**: The terms which apply and that may be amended from time to time in accordance with this document.

**“Contract”**: The agreed contract between the Client and Kandeshop for the supply of services or products in accordance with these conditions.

**“Client”**: The person who purchases services or products from Kandeshop

**“Effective Date”**: the date of this agreement

**“Force Majeure Event”**: Force Majeure for the purpose of this document, means an event beyond the control of Kandeshop including but not limited to, strikes, industrial action, failure of utility services and internet providers, war, riots, act of God, accident, breakdowns, fire, flood, storm, supplier or subcontractor failure, or transport network.

**“Initial Payment”**: The payment made to Kandeshop by the client on the Effective date.

**“Intellectual Property Rights”**: all patents, rights to inventions, utility models, copyright and related items, trademarks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in confidential material and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world.

**Kandeshop Ltd, Branston Court, Branston Street, Birmingham, B18 6BA,  
Company Reg No: 06924854**

**“Phase”**: Time frame outlined in the Project Plan

**“Project”**: The work provided by Kandeshop as set out in the contract

**“Project Plan”**: The overall time frame in which Kandeshop will implement the project.

**“(The) Proposal”**: The document to the Client from Kandeshop Outlining the charges and services provided in accordance with their requirements.

**“Set Up Fee”**: The Fee Payable by the Client to Kandeshop to commence their requested work. This is due on the date specified in the proposal.

**“Specification”**: The description of specific services required as outlined by Kandeshop to the Client

**“Suitability Testing”**: Tests performed on the website to determine suitability, usability, and functionality.

**“Services”**: The web services provided by Kandeshop to the Client in accordance with this agreement.

**“Site Specification”**: Details relating to the site in accordance with the Clients Specification.

**“Site Content:”** The content provided by the Client to Kandeshop to incorporate into the website

**“T's & C's”**: Means these terms & conditions

**“Third Party Products”**: Software provided by parties outside of those specified in the contract (Kandeshop and the Client)

**“URL” or “Website Address”** The unique internet address where the public can access a web-site, usually preceded by www or http://

**“Visitor”**: a visitor to the website.

## Maintenance and Support Agreement

### 1. In General;

1.1. For the Maintenance term set forth in this agreement, Kandeshop shall, where applicable or upon the request of the client, provide maintenance services and support five (5) days per week, eight(8) hours per day during the normal working hours of Kandeshop. Normal working hours are 9am-5pm GMT, Monday – Friday.

Maintenance services shall include, unless otherwise stated in the proposal document, the following. Kandeshop:

- 2.1.1.1. Maintenance request resolution to ensure that the website continues to perform in accordance with the applicable warranty.
- 2.1.1.2. Telephone support services during normal working hours for Kandeshop
- 2.1.1.3. Logging of errors by email.
- 2.1.1.4. Maintenance of the environment (servers) in which the website operates.
- 2.1.1.5. Maintenance request processing (acknowledgement, analysis if required, corrective actions planning.)

### 2.2. Maintenance Fee.

2.2.1. Kandeshop will provide maintenance as outlined in the proposal document for a fee. The maintenance fee will be in accordance with the specified fee in the proposal documentation. Where necessary Clients may obtain Maintenance Services and payment for these will be outlined in the mutually agreed proposal document. Error resolution according to the applicable warranty is provided free of charge.

2.2.2. The Client can opt for a monthly Maintenance package for a monthly fee for Kandeshop to make amendments to their site. These amendments are limited to 1 hours worth of work per month and will only include the amendments as follows:

- 2.2.2.1. Changing content (which must be supplied by the Client)
- 2.2.2.2. Changing images (which must be supplied by the Client)
- 2.2.2.3. Updating banners (content or images must be supplied by the Client)

2.2.3. Maintenance fees will be charged at the current flat rate for the first hour and an hourly rate for every subsequent. Should maintenance services endure for longer than eight (8) hours, Kandeshop will contact the Client to discuss the best possible action for the website. This may include site overhaul, site rebuild, etc. The Client will be notified in writing of the charges incurred by amending their existing site or developing a new one.

2.2.4. Maintenance Services will be reported to the customers as outlined below

| Severity Level | Severity Description  | Response  | Time for Response   |
|----------------|---|---|---|
| 1              | Severe: Potential loss or data or corruption, inoperative, loss of functionality, critical impact of Clients operations | Acknowledge and identify fault.<br><br>Temporary fix.<br><br>Permanent fix. | Less than 2 business hours.<br><br>Within 4 business hours.<br><br>Less than 2 business days. |
| 2              | Major: partially inoperative, restricted  | Acknowledge and identify fault.   | Less than 4 business hours.   |

|   |  |   |  |
|---|--|---|--|
|   | functions, disabled functions  | Temporary fix.<br>Permanent fix.                                    | Less than 2 business days.<br>Less than 5 business days.           |
| 3 | Mid level: faults to non essential features, non critical, Client can bypass errors to continue work | Acknowledge and identify fault.<br>Temporary fix.<br>Permanent fix. | Less than 2 business days<br>Less than 5 days<br>Less than 20 days |
| 4 | Minor: Minimal faults to site, any other fault non otherwise identified in Severity Levels 1,2,or 3  | Acknowledge and identify fault.<br>Temporary fix.<br>Permanent fix. | Less than 5 business days.<br>Less than 20 days                    |

2.3. In the case of Severe and Major faults as outlined in the table above, Kandeshop will endeavour to acknowledge the fault and amend as described within the timeframes aforementioned.

2.4. Obligation and Escalation Procedure.

2.4.1. Kandeshop shall resolve any Maintenance requests in accordance with the Severity level specified above. Should the Client wish to escalate the procedure, the client should contact their account manager or [support@kandeshop.com](mailto:support@kandeshop.com) via email as outlined in the proposal. Support requests can also be submitted by the Kandeshop support portal found at <http://kandeshop.com/support>. The account manager will deal with the matter, or refer it to management as necessary.

2.5. Telephone support. Clients are provided with twelve (12) months free telephone support when they purchase a website from Kandeshop. This support is available during normal Kandeshop working hours and covers issues mentioned in clause 2.1. Outside of these hours, a ticket based support portal is available on the Kandeshop website, and requests will be noted at the first available point in the next normal working day.

## Terms and Conditions for the Supply of Search Engine Optimisation Services

### 3.0 Basis of Contract

- 3.1. The order constitutes an offer by the customer to purchase Services in accordance with these conditions.
- 3.2. The order shall only be deemed to be accepted when Kandeshop offers written acceptance of the order, and on that basis, the date of contract (commencement date) will be determined.
- 3.3. The Contract shall continue for a period of twelve (12) months, unless specified otherwise, unless terminated in accordance with these Terms and Conditions. The contract at the end of the first 12 months, in relation to domains, hosting and other ongoing monthly packages, will automatically extend for a second 12 month period unless the Client expresses their wish to terminate by giving written notice sixty (60) days prior to the end of the first 12 months. The contract will automatically renew on a 12 monthly basis until written notice is given by either party 60 days prior to the renewal date.
- 3.4. The contract constitutes the entire agreement between the Client and Kandeshop. The Client understands that any statement, representation or promise made by Kandeshop or on Kandeshop's behalf cannot be relied upon unless it is stated in the contract.
- 3.5. Any visual illustration, image, drawing or advertising, description, comment or wording in any Kandeshop paraphernalia is issued or published for the sole purpose of explaining or describing Kandeshop services. The do not have any contractual force.
- 3.6. These conditions apply to the contract to the exclusion of any other terms that the Client seeks to impose or incorporate, or which are implied by trade, custom, practice, or course of dealing.
- 3.7. Any quotation offered to the Client by Kandeshop is not contractually binding and is only valid for a period of 10 business days commencing the date of issue.
- 3.8. Unless specified, the Services will be provided within 28 days.
- 3.9. A non refundable deposit will be required to commence these Services and the payment details will be provided in the Contract.

### 4. Supply of Services

- 4.1. Kandeshop shall supply the services outlined in the proposal and will aim to meet the deadlines specified therein, however these dates will only act as an estimate. Kandeshop will endeavour to provide services to the highest standard in the allotted timeframe.
- 4.2. Kandeshop reserves the right to make any changes to the services to comply with relevant laws or regulations. This will not affect the quality or nature of the service and Kandeshop will notify the Client in such instances.

- 4.3. Kandeshop shall provide a service to the Client with necessary care and skill. Kandeshop does not warrant nor guarantee a specific ranking position within any search engine including but not limited to Google, Yahoo or Bing.
  - 4.4. In regards to Domain names, Kandeshop acts an agent for the registration of domain names and require 14 days for the transfer of the names to or from our designated server. We cannot be held responsible for delays caused by third parties (i.e. if your old domain name provider won't release the name to us within 14 days).
5. Clients Obligation
    - 5.1. The Client shall:
      - 5.1.1. Ensure the details of the order and any other information that they provide is correct and accurate.
      - 5.1.2. Co-operate with Kandeshop in all matters regarding the services.
      - 5.1.3. Provide Kandeshop with reasonable facilities such as contact details, access to premises, etc as reasonably requested by Kandeshop.
      - 5.1.4. Provide Kandeshop with necessary materials and information for progression of services, and that the items provided are accurate, legal and correct.
      - 5.1.5. Obtain all necessary licences and permissions prior to the commencement of the services.
      - 5.1.6. Keep all documents, equipments, resources pertaining to Kandeshop in a secure location on their premises at the Clients own risk. The Client will not damage, destroy or dispose of any material belonging to Kandeshop and will keep them in good condition.
      - 5.1.7. If the obligations of Kandeshop are inhibited by the Client, or the services provided by Kandeshop are prevented or delayed by the client, the Client will not hold Kandeshop responsible for the delay in delivering the Services.
      - 5.1.8. Kandeshop reserves the right to suspend the services until the customer resolves the issues causing delays mentioned in clause 5.1.7.
      - 5.1.9. Kandeshop will not be held liable for any costs or losses occurring as a result of the Clients failures.
      - 5.1.10. The Client shall reimburse Kandeshop on written demand for any costs or losses incurred or sustained arising directly or indirectly from the Clients Failures.
  6. Charges and Payments
    - 6.1. The Charges for the Services shall be as follows:
      - 6.1.1. The Client shall pay the Set Up Fees and/ or Deposit on the commencement date
      - 6.1.2. The Client shall pay Kandeshop the monthly fee on the payment date as outlined in the contract.
      - 6.1.3. Kandeshop reserves the right to increase the monthly fee after the first 12 months of the contract. Kandeshop will inform the Client in writing thirty (30) days prior to this increase. Should the client not accept the new monthly fee, the Client must inform Kandeshop in writing within two weeks of the notice from Kandeshop. Kandeshop has the right to terminate the contract under these circumstances by giving the client sixty (60) days notice.
      - 6.1.4. Kandeshop will invoice the customer monthly in advance.
      - 6.1.5. The customer shall pay invoices from Kandeshop:

- 6.1.5.1. Within 30 days of the invoice date
  - 6.1.5.2. In full and in cleared funds by Bank transfer, PayPal or in person.
  - 6.1.6. If the Client fails to make a payment to Kandeshop by the due date outlined in the contract, Kandeshop has the right to charge interest on the overdue amount at a rate of 5% per annum above the current lending rate of Lloyds TSB PLC on a daily basis from the due date to the date that the payment is received.
  - 6.1.7. The Client shall pay all amounts due to Kandeshop under the contract as required by law. The Client will not withhold funds or make deductions, neither will they be entitled to any credit, counterclaims, etc to justify withholding payment, whether in full or in part. Kandeshop has the right to set off any amount owing to the Client against any amount payable by Kandeshop to the Client.
- 6.2. Payments regarding Pay Per Click
- 6.2.1. Kandeshop will charge the Client a set-up fee for the creation of one or more PPC campaigns; this set up fee is valid for a period of 6 months from the date of payment of the fee. If the Client decide to pause, suspend, or cancel a PPC campaign the Client will not be charged a set-fee if the Client resume the same campaign within a 6 month period, after this 6 month period a set up fee will apply.
  - 6.2.2. After the first 28 days of the Clients PPC campaign Kandeshop will charge the Client a management fee, this pays for amendments and improvements to the PPC advertising campaign for the proceeding 28 day period, the Client will be billed for this fee every 28 days or calendar month for the continued management of the Clients campaign. This fee does not cover the PPC keyword fee which is paid to us and passed directly on to the PPC provider.
  - 6.2.3. Every 28 days the Client will be billed for the actual PPC keywords, this is paid directly to the PPC provider for example Google. The Client will be sent a detailed statement of how the campaign has performed and the total cost. If the Client receives less clicks than budgeted for, the Client will only pay for what was received. If payment is mistakenly made by us for the whole amount the Client will be due a refund for the difference. Some PPC providers may have a buffer of 10% over the budget amount to ensure the advert is effective as possible. Kandeshop will endeavour to keep the Client informed of such an action but can not take responsibility for extra click charges from PPC providers. Each Providers T's & C's will be provided to you upon the commencement of the PPC campaign.
  - 6.2.4. If the Client receives no click throughs or less click throughs than anticipated or more as stated in section 5c, KANDESHOP's Management fee will still be applicable for the 28 day period.
  - 6.2.5. Unless Kandeshop receive cancellation in writing as detailed in clause 10, Kandeshop will debit the Clients credit card or account the management fee as detailed on the monthly invoice. By signing the order, the Client authorizes Kandeshop to automatically debit their credit card or account as and when fees are due. Management fees will be due 5 days from the date of the invoice.
  - 6.2.6. All fees are non refundable other than circumstances as set out in section 6.2.4
  - 6.2.7. Kandeshop reserve the right to change the Set Up, Management, or Website fees by giving you 14 days notice in writing.

## 7. Intellectual Property Rights

**Kandeshop Ltd, Branston Court, Branston Street, Birmingham, B18 6BA,  
Company Reg No: 06924854**

- 7.1. All intellectual property rights in connection or arising from the services provided by Kandeshop, will be owned by Kandeshop.
  - 7.2. The Client understands that any use of third party intellectual property rights is subject to Kandeshop obtaining the necessary permissions that will enable Kandeshop to license such permissions to the Client. Kandeshop will not be held responsible or liable for any material or content supplied by the Client that does not have the necessary permissions to be used.
  - 7.3. Kandeshop Internet Materials are the exclusive property of Kandeshop.
8. Confidentiality
- 8.1. For the purpose of this clause, confidential information refers to all information disclosed in writing, by email, orally, by fax, all images or drawings or designs, all videos and audio, and all specification discussed or submitted between the Client and Kandeshop. This information:
    - 8.1.1. must be identified as confidential at the time of disclosure
    - 8.1.2. should be considered confidential given the nature of the information or the circumstances at the time of disclosure
  - 8.2. Each party shall take every measure to protect the confidential information of the other party in order to prevent unauthorised disclosure
  - 8.3. Confidential information can be disclosed to the employees, affiliates and other professional advisors of the receiving party as necessary given that those receiving the information are bound by a confidentiality agreement.
  - 8.4. When the receiving entity can demonstrate the following, the obligations pertaining to the Confidential information as set out in clause 34.1 shall not apply:
    - 8.4.1. Has become public knowledge other than via breach of this agreement
    - 8.4.2. The information was already in the possession of the receiving party prior to its disclosure by the other party
    - 8.4.3. Was given to the receiving party by a third party who had full right of disclosure
    - 8.4.4. Was required, in writing, to be disclosed by a government authority or other regulatory body.
  - 8.5. The obligations regarding confidentiality will not be affected by the termination or expiration of this agreement.
  - 8.6. Clause 34.0 supersedes the terms or any other non-disclosure agreement between Kandeshop and the Client.
  - 8.7. The Client and those parties in connection with the Client, shall keep all confidential matters, technical knowledge, commercial knowledge, processes, ideas, initiatives, and other such matters disclosed to them by Kandeshop, confidential. The Client shall not disclose or should limit disclosure of such confidential matters to its employees, agents, or subcontractors. Where information is disclosed, the Client should stress the obligations of confidentiality to those parties exposed to the information in line with the Data Protection Act 1998.

## 9. Limitation of Liability

9.1. Nothing in these conditions shall limit or exclude Kandeshop liability for:

9.1.1. Death or personal injury caused by its negligence or the negligence of its employees, agents or subcontractors.

9.1.2. Fraud or fraudulent misrepresentation

9.1.3. A breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982.

9.1.4. Kandeshop shall not be under any circumstance held liable for any loss of profit for the Client, directly or indirectly connected with the Contract.

9.1.5. Kandeshop shall not be held liable for delays or failure of the services directly or indirectly relating to the omissions of internet service providers.

9.1.6. Kandeshop's total liability to the customers in respect of all other losses arising or in connection with the contract or otherwise, shall not exceed one month of payments.

9.1.7. Except as outlined in this document, all warranties, terms or other conditions implied by statute or common law, permitted by law, are excluded from the contract.

9.1.8. This clause shall survive termination of the contract.

9.1.9. The Client shall acknowledge and agree that computer and telecommunications systems are not uninterrupted or fault free and Kandeshop do not make any representation or warranty in relation to such systems. The Client shall further acknowledge and agree that occasional periods of downtime for repair, maintenance and upgrading may be required and we cannot therefore guarantee uninterrupted provision of Services. Kandeshop will take all commercially reasonable steps to minimize any such periods of interruption or non-availability.

9.1.10. The Client acknowledges and agrees that Kandeshop make no warranty and give no representation of any kind in relation to Third Party Data and will accept responsibility or liability for inaccuracy in or arising out of Third Party Data.

9.1.11. Kandeshop shall not be liable, to the maximum extent permitted by applicable law, for any of the following losses or damage (whether arising in contract, tort (including negligence) strict liability, or otherwise, and whether such losses or damage were foreseen, foreseeable, known or otherwise):

9.1.11.1. loss of revenue

9.1.11.2. loss of actual or anticipated profits (including for loss of profits on contracts)

9.1.11.3. loss of anticipated savings

9.1.11.4. loss of business

9.1.11.5. loss of opportunity

9.1.11.6. loss of goodwill

9.1.11.7. loss of reputation

9.1.11.8. loss of, damage to or corruption of data or software

9.1.11.9. wasted expenditure

9.1.11.10. any indirect or consequential loss or damage

## 10. Termination

10.1. Without limiting any other rights, either party has the right to terminate the contract with immediate effect by giving written notice under the following circumstances:

10.1.1. The other party breaches the terms of the contract and fails to rectify that breach within 30 days of being notified in writing of that breach.

- 10.1.2. The other party suspends or threatens to suspend payment of its debts due to inability relating to section 123 of the Insolvency Act 1986 if they are a company, or having no reasonable means to pay if they are an individual, or if either conditions apply to one member of a partnership.
- 10.1.3. The other party begins negotiations with its creditors regarding the rescheduling of their debts or if the other party arranges a solvent amalgamation scheme.
- 10.1.4. The other party is the subject of a bankruptcy petition or order.
- 10.1.5. A creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days.
- 10.1.6. The other party ceases or suspends, or considers ceasing or suspending their business
- 10.1.7. The other party becomes incapable of managing its affairs due to death or illness whether mental or physical, or is a patient under any mental health legislation.
- 10.1.8. Kandeshop has the right to terminate the contract with immediate effect if the Client fails to pay any amount due under the contract on the due date for payment, giving the Client written notice of this termination.
- 10.1.9. Without limiting its rights, Kandeshop has the right to suspend the provision of services under the contract if the Client becomes subject to any circumstance listed in clause 11 or its subheadings or if Kandeshop believes that the Client is due to fall subject to any of these circumstances.

## 11. Consequences of Termination

### 11.1. On termination of the Contract:

- 11.1.1. The Client shall pay to Kandeshop all of the outstanding monies due for unpaid invoices and interest where necessary. For any services where payment is due and no invoice has been created, Kandeshop will submit an invoice which will be payable by the Client on receipt.
- 11.1.2. The Client will return to Kandeshop, all Kandeshop Materials which have not been fully paid for. If the customer fails to do so, Kandeshop will apply the necessary legal action to retrieve the goods for the Client's premises. Until the items are returned to Kandeshop, the Client is responsible for the safe keeping of the items, and the items will not be used for any purpose not connected with the contract.
- 11.1.3. The rights, obligations or liabilities of either party shall not be affected by the termination or expiry. This includes the right to claim damages in respect to any breach of contract occurring before or at the time of termination or expiry.
- 11.1.4. Clauses which expressly or by implication have effect after termination shall continue in full force and effect.

## 12. General

### 12.1. Force Majeure

- 12.1.1. Force Majeure for the purpose of this document, means an event beyond the control of Kandeshop including but not limited to, strikes, industrial action, failure of utility services or Kandeshop suppliers and internet providers, war, riots, act of God, accident, breakdowns, fire, flood, storm, supplier or subcontractor failure, or transport network.

- 12.2. Kandeshop will not be held liable for any delay or failure to meet its contractual obligations to the Client due to a Force Majeure event.
- 12.3. Should a Force Majeure Event prevent Kandeshop from completing its services for longer than 60 days, Kandeshop will give written notice to the Client to terminate the contract.
13. Assignment and Subcontracting:
- 13.1. Kandeshop has the right to, from time to time, assign or subcontract its obligations under the contract to a third party agent.
- 13.2. The client shall not, assign or subcontract any of its obligations or rights to a third party without the written consent from Kandeshop.
14. Notices:
- 14.1. Any notice or communication between the Client and Kandeshop shall be made via telephone or email.
- 14.2. For any communication regarding legal matters, clause 15.1 will not apply and all communication must be made in writing and sent via post to the party. In this instance, e-mails and telephones will not be accepted.
15. Waiver:
- 15.1. A waiver of any right under the contract is only deemed valid if it is made in writing and will not be deemed to be a waiver of any subsequent breach or default. Failure by any party to exercise their rights shall constitute a waiver of that right. Single or partial exercise of such rights shall not restrict the exercise of further rights.
- 15.2. Rights arising under the contract are cumulative and do not exclude rights provided by the law unless specified.
16. Severance
- 16.1. If a court or other higher authority finds any part of the contract invalid, illegal, or otherwise, that part of the contract will be removed and deleted. This shall not affect the validity of other provisions and aspects of the contract.
- 16.2. If any invalid, illegal or otherwise provision of the contract is deemed valid and enforceable if part of it was deleted, the minimal modification will be made to make it legal and valid.
- 16.3. No part of the contract is intended to constitute to a joint venture or partnership between the parties or any third party. No party has the right to act as an agency for the other party or legally bind the other party in any circumstance.
- 16.4. Third parties do not have any rights under the contract as they are not a part of it.

- 16.5. Except as set out in these conditions, any variation or addition to the terms will not be binding unless agreed in writing and signed by Kandeshop.
- 16.6. Any dispute arising from or in connection to the contract is governed according to English Law and exclusive jurisdiction must be submitted to the courts of England and Wales.

Kandeshop Ltd

Tel: 0121 4000 171

Email: Support@Kandeshop.com

Website Design and Development Agreement

**Kandeshop Ltd, Branston Court, Branston Street, Birmingham, B18 6BA,  
Company Reg No: 06924854**

### Agreed Terms

19. Heading and Clause numbers shall not affect the interpretation of this document.
20. References to clauses and headings are in reference to those contain within this document.
21. Content refers to any written, audio, video, text, image content supplied by the Client to Kandeshop for use on their website and that will be accessible by visitors.
22. Written or writing refers to email, faxes and posted mail
23. Project Idea
  - 23.1. Kandeshop will develop and deliver the site in accordance with the project plan.
  - 23.2. Kandeshop will provide the services as contracted
24. Customer Involvement
  - 24.1. The Client understands that the ability for Kandeshop to deliver the services is partly dependant on the timely co-operation on the client, as well as accurate and complete information from the Client
  - 24.2. The Client is responsible for ensure the information supplied is accurate and complete prior to submitting it to Kandeshop.
25. Development and Site Suitability
  - 25.1. Once the site has been developed, the site will undergo Suitability Testing in correlation with the relevant phase of the Project Plan. This testing will be repeated as deemed necessary by Kandeshop throughout each phase of the Project Plan.
  - 25.2. The Suitability testing will test compliance in relation to the Site Specification.
  - 25.3. Once the Suitability Tests have been passed, Kandeshop will notify the Client in order for the site to be approved by the Client.
  - 25.4. Should the site fail the Suitability Testing due to failings by the Client whether by error or omission, Kandeshop will not be held responsible. Kandeshop will endeavour to assist the Client by the supply of additional services or products where necessary and the costs of these additional processes or services will be made payable to Kandeshop by the client at Kandeshop's current prices.
  - 25.5. Acceptance of the site will be proven by:
    - 25.5.1. The Client using the live site for actual revenue earning purposes.
26. Account Management
  - 26.1.1. Where possible and relevant, each Client will have a specific account manager who will:
    - 26.1.1.1. Be their first point of call for enquiries
    - 26.1.1.2. Act with a professional manner and liaise with the Client efficiently.

26.1.2. In the event that an account manager is not assigned to a Client, please forward all queries to the Kandeshop team on +44 (0)121 314 7863 or submit a ticket online at [Kandeshop.com/support](https://Kandeshop.com/support)

## 27. Charges and Payment

27.1. The Client shall pay Kandeshop the deposit on the effective date. This deposit is non refundable and is equal to 30% of the total cost of services.

27.2. Unless specified, the balance for the Services is payable by the Client to Kandeshop within 14 days after the completion of the site.

27.3. The files for the site will not be transferred to the Client until all fees and charges have been paid in full and cleared to Kandeshop.

27.4. If the Client fails to pay any amounts payable to Kandeshop on or before the agreed payment date, Kandeshop will be entitled to charge the Client interest on the balance for every day that the Client has not paid. This interest will be charged at a rate of 5% per annum above the current lending rate of Lloyds TSB PLC. Kandeshop reserves the right to claim interest under the Late Payment of Commercial Debts (Interest) Act 1998.

## 28. Warranties

28.1. Both parties in the contract warrant to one another that they have the power and authority to enter this agreement.

28.2. Kandeshop will provide the desired services with care and skill.

28.3. This agreement fully sets out the obligations and liabilities of Kandeshop in regards to the services being supplied. All other terms implied into this agreement or any collateral contracts are excluded.

28.4. This agreement is made between Kandeshop and the Client who is acting as a business and not a consumer, and the Client will use the Kandeshop services for legitimate business use only. The Client will continue to hold all rights, permission and consents to enable Kandeshop to use the Content (including any data or copyright works as referred to) in accordance with these conditions.

## 29. Limitations of Remedies and Liability

29.1. This agreement does not exclude or limit Kandeshop's liability for :

29.1.1. Death or personal injury caused by its negligence

29.1.2. Any breach of terms outlined in section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982

29.1.3. Fraud

29.1.4. Any other liability that cannot be limited or excluded by applicable law

29.2. Kandeshop will not be held responsible or liable to the Client for any damage to software, data, or profit, or potential profit, business opportunity, or any other consequential damage or loss.

29.3. Subject to clause 29.1, Kandeshop shall pay the Client a maximum of 25% of the total price payable, in compensation should matters arise due to Kandeshops negligence where services cannot be provided as set out in the contract. Kandeshop will endeavour to restore services when possible.

### 30. Intellectual Property Rights

30.1. All Intellectual Property Rights in the site (including both content and site software) that arise from this agreement shall be the property of the Client and Kandeshop shall assign all Intellectual Property Rights to the client.

30.2. The Client shall indemnify Kandeshop against all damages, losses and expenses arising as a result of any action or claim that the contents infringe the Intellectual Property Rights of a third party.

30.3. The indemnities in clause 30.2 are subject to the following:

30.3.1. The indemnified entity notifies the indemnifier in writing of the claim promptly.

30.3.2. The indemnified entity makes no admissions or settlements without the prior written consent of the indemnifier.

30.3.3. The indemnified entity allows complete control over the litigation and settlement of the claim to the indemnifier.

30.3.4. The indemnified entity assists and provides all necessary information to the indemnifier.

30.4. The indemnities stated in clause 30.2 shall not be invoked to the extent that the action of the indemnifier is a result of the indemnified entity's instruction.

### 31. Site Content

31.1. The Client must ensure that all content supplied by them does not infringe on any applicable laws/regulations, or third party rights. This includes content that is indecent, pornographic, obscene, offensive, threatening, defamatory, seditious, inciting racially aggravated acts or acts of terrorism, blasphemous or menacing, generally inappropriate, or in breach of any third party rights.

31.2. The Client shall compensate Kandeshop against all damages, losses and expenses arising from any claim or action based on the content being deemed inappropriate.

31.3. Kandeshop may include reference to Kandeshop on the home page of the website such as the statement "Web Development and SEO by Kandeshop."

### 32. Term and Termination

32.1. This agreement shall commence on the Effective Date and automatically terminate on the Client's acceptance of the site and all outstanding payment is made to Kandeshop.

32.2. This agreement may be terminated with immediate effect by either the Client or Kandeshop by providing the other party with written notice under the following circumstances:

32.2.1. The other party breaches its obligation under this agreement which has not been rectified within 30 days after the service of written notice. This notice must specify the breach and that it is required to be remedied; or

32.2.2. The other party:

32.2.2.1. Ceases trading

32.2.2.2. Goes into administration and is unable to pay its debts

32.2.2.3. An individual is appointed to take control of the business or its assets, or notice of such an intent is given including those being filed in a court of law.

32.2.2.4. An agreement is made either between parties or by a court order, that an amount less than the total owing to them is accepted. This is only acceptable when the party's creditors are unable to enforce their debts.

32.2.2.5. Any process is initiated that could lead to the dissolving of the entity with its assets being split between shareholders or other contributors.

32.3. On termination of this agreement by Kandeshop, any licensing granted to Kandeshop under this agreement will terminate with immediate effect.

32.4. On expiry or termination of this agreement by Kandeshop, Kandeshop will promptly return all content and images to the Client, supply an electronic copy of the site with all files included subject to all payment being made.

32.5. On termination of this agreement by Kandeshop, this agreement will cease to have effect except in clauses pertaining to ongoing services which will continue with full effect.

### 33. Force Majeure

33.1. Should a party become aware of a Force Majeure that will affect the services in terms of delays in completion or failure in completion under this agreement, the party shall notify the other party regarding the estimated delay time. The affected party will take reasonable steps to mitigate the effects of the Force Majeure.

### 34. Notices

34.1. A notice given under this agreement:

34.1.1. Shall be given in writing in English (or with a proper English Translation)

34.1.2. Shall be sent for the attention of a particular person to their postal or email address as given in the contract. The notice will take into effect five working days after the notice has been received.

34.1.3. Otherwise shall be delivered in person or registered airmail.

34.2. The addresses for services of notice are as documented on the order and/or invoice.

34.3. A notice has been received when:

34.3.1. It is delivered in person

34.3.2. An email response has been made by the end of the following working day

34.3.3. 72 hours after a notice has been sent by first class mail, registered post, or recorded delivery

34.3.4. 5 days from the postage date for airmail

34.4. To prove service, the parties assume that the email was sent to the correct email address or the mail was posted to the correct address and for the attention of the correct person.

### 35. Publicity and Assignment

35.1. Both parties shall cooperate in any media releases, press and public announcements relating to this agreement including promotional or marketing material.

35.2. Neither party can assign or transfer their rights under this agreement without the written consent of the other party. This consent must not be unduly delayed.

### 36. Entire Agreement

36.1. Neither party has the remedy in respect of any untrue statement made to it which was relied on when the contract was agreed. Neither party has any liability to express terms of this agreement except for the pursuant. Nothing in this agreement limits or excludes the liability of either party for any fraudulent misrepresentation claims.

### 37. Third Party Rights

37.1. This agreement is made between the Client and kandeshop and is not intended to benefit any other party.

### 38. Variation and Waiver

38.1. Any variation to this agreement should be submitted in writing and signed by both the Client and Kandeshop

38.2. A waiver under this agreement is only acceptable if it is in writing and will only be relevant to the circumstances that it address and the person whom it is addressed to. The failing to take action will not imply a waiver.

38.3. The rights in this agreement do not exclude the rights provided by law unless otherwise specified.

### 39. Governing Law and Jurisdiction

39.1. Kandeshop and the Client both agree that the courts of England govern the agreements and disputes any claims or disputes arising, and they have unreserved rights to settle any claims or disputes arising.

### Change Control Procedure

1. Kandeshop and the Client shall discuss any changes to this agreement and any changes must be submitted in writing either by the Client or by Kandeshop. If there is no request for change, the Change Control Procedure will not commence.
2. When a written request for change has been received from the Client, Kandeshop will respond with a Change Control Notice within 5 working days of receipt of this request, or will reply informing the client that the request for change is not possible.
3. A recommendation for change will be submitted by Kandeshop to the Client as a Change Control Notice.
4. A Change Control Notice contains:
  - a. The title of the change
  - b. The party requesting change
  - c. The date the change was requested
  - d. Details of the change include any specifics
  - e. The price of the change
  - f. The timetable for implementing the change
  - g. Impact of the change on this agreement:
    - i. Changes
    - ii. Contracts
    - iii. Staff resources
  - h. Expiration date of the Change Control Notice (cannot be less than Xdays)
  - i. Area for signatures from both parties
5. The Client shall, for each Change Control Notice submitted, within the validity period:
  - a. Allocate a number to the Notice
  - b. Evaluate the Notice
    - i. Requesting additional information if necessary
    - ii. Approve the Notice
    - iii. Reject the Notice and inform Kandeshop in writing
6. Once both parties have agreed to the Change Control Notice and it has been signed, the changes shall be with immediate effect and both parties will perform their obligations in respect to the new agreement.