

Prosperitiv Standard Terms of Agreement



Please take the time to read this document **carefully**.

We like to think that we at Prosperitiv are friendly and easy to work with, but it is always important to understand what we expect from you as our client and what you should expect from us.

If you have any questions at all, please contact us and we will be pleased to help.

Definitions

Company Name: Prosperitiv (Custom Consulting Services Ltd Trading as)

Registered Office: Mulberry House, Uley Road, Dursley, Gloucestershire, GL11 4PF

Company Number: 5826141. Registered in England.

VAT Registration: 880 1045 47

Telephone: +44 (0) 1454 261111

Email: enquiries@Prosperitiv.com

Website: www.Prosperitiv.com

For this agreement:

A 'client' is a person, persons, business or organisation using any of the services provided by Prosperitiv.

A 'project' is any work undertaken or service provided by Prosperitiv for the client on their request, including, but not limited to, websites and web-based applications.

The 'domain name' is the internet address to be used for the Project as specified by the client.

'Hosting' is a monthly service to keep a client's project activated online.

'Content' is text, images and documents that the client stores in the project.

General

The contract between Prosperitiv and the client will be on these conditions, to the exclusion of all other terms and conditions. This agreement is not intended to benefit, or be enforceable by any other person.

This agreement becomes effective once the client has agreed to these terms and conditions via an email acknowledgement or once either any initial; payment or deposit payment has been received.

The client agrees that for purposes of venue, this agreement was entered into in the UK and any dispute will be litigated or arbitrated in the UK.

Prosperitiv is VAT registered and all sums discussed with the client will have VAT added accordingly at the prevailing rate.

Any variations to these conditions shall have no effect unless agreed in writing.

It is the client's responsibility to check and ensure that any project is lawful and does not infringe any copyright or any other laws.

Both Prosperitiv and the client should take care to protect the interests and property of the other party.

1. Client Obligations & Assumptions

In order to complete any project successfully, we expect the client to provide the following:

- 1) Provide one point of contact for the duration of the project and participate in requirements and planning sessions.
- 2) Participate in a timely manner for all reviews/feedback sessions during the project. *Delays in providing timely feedback are likely to extend the project delivery timeframe.*
- 3) Third Party: all third party hardware, software and other integrations are outside the scope of any proposal unless specified otherwise.
- 4) Where Prosperitiv provides the client with a license to use the Sharpspring SaaS product it does so as a Premium Partner of Sharpspring and as such the client agrees to operate within the terms of the [SharpSpring Partner Terms agreement in conjunction with Client's use of the SaaS and Partner's use of the SaaS on behalf of a Client.](#)
- 5) Where Prosperitiv provides the client with a license to use Prosperitiv Systems SaaS product (PrS) powered by HighLevel LLC the client agrees to operate with the terms of [Highlevel Terms of Service & User Agreement](#)
- 6) Prosperitiv's standard payment terms will be in force for the duration of any assignment which for web development work or large pieces of consultancy are 50% upon commissioning and 50% on completion of the work (whether live or not as often making a project "live" is dependant upon 3rd party implementation beyond Prosperitiv's control).

Where the work relates to ongoing campaigns (e.g. Social Media or Search Engine Marketing) set-up fees are payable upon commissioning and the monthly management fees and/or search engine budgets are payable monthly in advance by standing order and/or credit/debit card.

2. Standard Terms & Conditions

- 1) For the purposes of this agreement and for ease of reference, Custom Consulting Services Ltd T/A Prosperitiv.com will be referred to simply as Prosperitiv
- 2) Proposal and pricing information is valid for 30 days from the date submitted.
- 3) The initial amount (down payment) is determined by the agreed upon payment terms, and is non-refundable. Project payments are due upon completion of their respective project milestone. Delays in payment may impact project timeline. Standing orders are due on the due date and any delay in receipt of due funds will be chargeable at a rate of 10% per month based on the overdue amount
- 4) Order Form: upon finalisation of the initial scope of the project and the fees, Custom Consulting Services Ltd will submit this form and an invoice for the agreed upon project. The client's signature on this agreement or deposit in absence of the signature on the Order Form constitutes acceptance of the project and its terms.
- 5) Fees are based on a variety of factors some of which are outside the control of Custom Consulting Services Ltd and may change without notice. Custom Consulting Services Ltd

agrees to notify the client in advance where reasonable of any additional expenses that may be incurred. The client agrees to reimburse any additional charges.

- 6)** The outcome of any project is dependent on a number of factors including timeliness of client participation, other client internal operations and third party dependencies. Custom Consulting Services Ltd does not guarantee the outcome and no such guarantee is expressed or implied.
- 7)** In no event shall Custom Consulting Services Ltd or its agents, be liable to the client for lost profits, lost opportunity, or any damages, whether direct, indirect, consequential, exemplary, punitive or otherwise, arising out of any service provided or arranged by Custom Consulting Services Ltd. Custom Consulting Services Ltd shall not be liable for any error, omission, defect or deficiency in any service or solution, which may result from, but not exclusive to, the client's failure to provide complete, accurate and current information to Custom Consulting Services Ltd.
- 8)** Project scope: any items not specifically scoped are not included in a proposal and will be billed, after notifying the client, at agreed upon fees.
- 9)** Any changes to the requirements after work has started may cause development work to stop until a new specification has been agreed. It is the client's responsibility to ensure that their wishes are made clear to Prosperitiv.
- 10)** Out of pocket expenses: Unless otherwise specified it is assumed that meetings will be conducted on Custom Consulting Services Ltd premises (or virtually via tele or video conference). In the event that any employee is required to attend another location, mileage and travel time will be invoiced to the client at the standard hourly rate and @ 45p per mile.
- 11)** Additional work and/or meetings commissioned at the request of the client (not specified in this agreement) will again be invoiced in accordance with condition (10) above.
- 12)** Custom Consulting Services Ltd does not warrant that the deliverables will operate in combinations other than as specified in the proposal or that the operation of the deliverables will be uninterrupted or error-free.
- 13)** The client acknowledges and agrees that Custom Consulting Services Ltd may provide services to other businesses including those in the same or similar line of business as the client.
- 14)** The client warrants that the written copy and images provided for use on this project is not copyrighted by a third party. The client also recognises that because subject matter does not have to bear a copyright notice in order to be protected by copyright law, absence of such notice does not necessarily assure a right to use. The client further warrants that no copyright notice has been removed from any material used in preparing the written copy and images for the project. To support these warranties, the client agrees to indemnify and hold harmless Custom Consulting Services Ltd for all liability, damages and legal fees that may be incurred in any legal action connected with copyright infringement involving the work produced or provided.
- 15)** For Campaign Management, monthly retainers or otherwise periodic services (such as the provision of SaaS Licenses): unless otherwise stated and agreed upon by both the client and Custom Consulting Services Ltd, the client agrees to submit a three (3) month service cancellation notice. Cancellation fee shall be equal to 3 monthly payments of the monthly maintenance/consulting fee or other service payments, and shall be due on cancellation. (In the case of a website being provided by Prosperitiv, a service package MUST BE in place at all times).

- 16)** The reason we use standing orders rather than direct debits is to provide our clients with the assurance that they are in control and can cancel or amend the regular payments at any time. However, it also ensures that management plan payments are made on time without the need to chase (receipted vat invoices are issued by our accounts team immediately payments are received).

If for any reason a client is not able to set up regular payments, then we reserve the right to charge our normal hourly rate (£85+vat) for any additional work required to chase overdue amounts together with interest accruing at 10% per annum on any outstanding amount (calculated on a daily basis).

- 17)** Although Custom Consulting Services Ltd shall have the right to approve the design, content and links to and from the client's website, and internet marketing programs, Custom Consulting Services Ltd assumes no responsibility to do so. The client agrees to be solely responsible for their content and the accuracy of all information provided.
- 18)** In the event of default under this agreement, Custom Consulting Services Ltd shall have the right to terminate this agreement and to terminate all services of the client's marketing programs and any other services. The client shall have no right to a refund of any kind and will be responsible for all costs and legal attorney fees incurred by Custom Consulting Services Ltd in connection with client's breach of this agreement.
- 19)** For websites where 3rd Party Open Source software is used (such as Microsoft DNN or WordPress for example):

Permission is hereby granted, free of charge, to any person obtaining a copy of this software and associated documentation files (the "Software"), to deal in the Software without restriction, including without limitation the rights to use, copy, modify, merge, publish, distribute, sublicense, and/or sell copies of the Software, and to permit persons to whom the Software is furnished to do so, subject to the following conditions:

The above copyright notice and this permission notice shall be included in all copies or substantial portions of the Software.

THE SOFTWARE IS PROVIDED "AS IS", WITHOUT WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NONINFRINGEMENT. IN NO EVENT SHALL THE AUTHORS OR COPYRIGHT HOLDERS BE LIABLE FOR ANY CLAIM, DAMAGES OR OTHER LIABILITY, WHETHER IN AN ACTION OF CONTRACT, TORT OR OTHERWISE, ARISING FROM, OUT OF OR IN CONNECTION WITH THE SOFTWARE OR THE USE OR OTHER DEALINGS IN THE SOFTWARE.

20) Our Hours of Work & Conduct

The staff at Prosperitiv will always endeavour to make themselves available as much as possible to answer client emails and telephone calls. Our office hours are 9am – 5pm Monday to Friday. Prosperitiv will not tolerate any form of harassment against its employees from customers or third parties and we reserve the right to cancel a contract without refund in the event of unreasonable or inappropriate conduct.

21) Support and Ongoing Maintenance

Support will be provided by Prosperitiv during our normal working hours and will be provided via email or over the phone.

If a visit to the client's premises is necessary then additional fees may be charged to the client for mileage and time on site.

An out-of-hours support agreement and/or service level agreement (SLA) can be put in place by arrangement, and may be separately chargeable. The client is responsible for ensuring that their business critical processes are adequately supported.

- 22)** All amendments to the client's project will be quoted for by Prosperitiv and agreed upon with the client before any work is carried out. The client is responsible for providing Prosperitiv with a Purchase Order for any amendment if necessary.

Additional web-related third-party services are not included unless explicitly stated. Prosperitiv will consult and provide advice and the client will be responsible for any third-party costs incurred.

23) Browser Compatibility

Prosperitiv projects are designed to be compliant with the current versions of Firefox, Safari, Chrome, Opera, and Microsoft Edge

Prosperitiv strongly recommends that all customers upgrade to the latest version of their preferred browser to avoid any security issues and to benefit from rapidly progressing web standards.

The client is responsible for understanding the audience of their project and for informing Prosperitiv before the project begins if any other browser version needs to be supported. Additional costs may be incurred if any historic version of a browser needs to be supported.

Prosperitiv is unable to test all new browsers as they become available on new platforms (e.g. mobile phones, tablets), and therefore changes to existing projects to suit new technologies may be subject to additional charges.

24) Accessibility

The client is responsible for informing Prosperitiv if the project needs to pass any accessibility tests or standards prior to the start of the project. The client, not Prosperitiv, is responsible for ensuring that the project is compliant with the Disability Discrimination Act (DDA).

25) Hosting Service

In the case where Prosperitiv has arranged the hosting for the project via Catalyst2 or WP Engine, they will endeavour to provide a reliable and professional hosting service to the client, but do not guarantee that the project will be available at all times, especially in the event of a technical failure beyond our control.

Prosperitiv will not be held responsible for any consequential damages due to the use of or inability to use the client's project.

In the case where Prosperitiv has not arranged the hosting for the project, the client is fully responsible for the provision of the hosting service including regular backups of their data, unless explicitly agreed otherwise with Prosperitiv.

The hosting charges will begin in the month that the project is available on the internet for the client to test and/or begin loading content. The ongoing hosting costs will be reassessed at regular intervals and will be adjusted based on the site usage as measured by our hosting statistics. Fees are based on a rate of £20 per Gigabyte per year (minimum £19.95pm).

Advance notice of one calendar month will be given of any change to the hosting cost. Where hosting has been paid for in advance, the new charge will start at the end of the paid for period.

26) Email Services

We no longer provide eMail Services and we recommend clients arrange their own eMail Services via Google Workspace or other similar Email Service Providers (ESPs).

27) Search Engine Marketing Campaigns

Where Pay Per Click (PPC) or Search Engine Optimisation (SEO) campaigns are commissioned; these are for a minimum period of 3 months, with one months' notice thereafter. Such notice is required to increase or decrease campaign budgets or pause/cancel campaigns.

Where 3rd Party services are provided to track call volumes / call recording or call conversions, then further charges may become payable to that 3rd party, but only after a separate agreement between the company and the client.

28) Legal Disputes

This Agreement shall be interpreted and construed under the laws of the UK. The parties agree that any action brought by either party against the other shall be brought in the UK, and the parties do hereby waive all questions of personal jurisdiction or venue for the purpose of carrying out this provision.

29) Changes to these Terms and Conditions

Prosperitiv reserves the right to change or amend these Terms of Service at any time without prior notice. An up-to-date copy will always be available at the following URL:

https://prosperitiv.com/wp-content/uploads/Prosperitiv-standard_terms_of_agreement.pdf