

AMERGE LTD TERMS OF SERVICE

BACKGROUND

- (A) The Agent is in the business of providing Services related to advertising, management and promotion of goods and Services on Amazon. The Fees set out in this Agreement cover the Services outlined in **1.1. Definitions** of this Agreement. Additional Services may require additional fees and contracts separate to this Agreement.
- (B) The Client wishes the Agent to provide, and the Agent is willing to provide, the Services outlined in **1.1. Definitions** of this Agreement to the Client on and subject to the terms of this Agreement.

Agreed Terms

1. Interpretation

The following definitions and rules of interpretation apply in this Agreement.

1.1 Definitions:

Advertising Spend: advertising spend under the Agent's management delivered on Amazon Ads Platforms.

Affiliates: any entity that directly or indirectly controls, is controlled by, or is under common control with another entity.

Business Day: a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business.

Client's Property: any and all materials, documents, records, research, photography, logos, designs, software or other property (including all Intellectual Property rights therein) belonging to the Client and/or any of its Affiliates, which are provided to the Agent by or on behalf of the Client (including copies of the Client Brand Guidelines and/or the Client's Marketing Policy) and/or otherwise come into the possession, custody or control of the Agent in connection with the provision of the Services.

Fee: Included within CPM

Commencement Date: As referenced in IO Agreement.

Confidential Information: has the meaning given in **Clause 7**.

Term: As referenced in IO Agreement.

Notice Period: The Client shall give a **1 month** notice to Agent in advance of renewal otherwise contract shall renew as above.

Controller: the entity which determines the purposes and means of the Processing of Personal Data, including as applicable any “business” as defined under **Data Protection Legislation** of this Agreement.

Data Protection Legislation: All applicable data protection and privacy legislation in force from time to time across the UK and European Union relating to personal data and the privacy of electronic communications. This includes, without limitation, the UK Data Protection Legislation comprising the General Data Protection Regulation ((EU) 2016/679) as it applies in the UK; the Data Protection Act 2018; the Privacy and Electronic Communications Directive 2002/58/EC (as updated by Directive 2009/136/EC) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended. Additionally, it encompasses any other legislation and regulatory requirements which apply to a party relating to the use of Personal Data, along with the guidance and codes of practice issued by relevant data protection or supervisory authorities applicable to a party.

Intellectual Property Rights: patents, utility models, rights to inventions, copyright and related rights, moral rights, trademarks and service marks, business names and domain names, rights in get-up, rights in designs, rights in computer software database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets) and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

Personnel: officers, employees, consultants, agents, representatives and advisers

Personal Data: information defined as personal data, personal information, or a similar term by Data Protection Legislation.

Personal Data Breach: any (a) compromise of the security, confidentiality, or integrity of Personal Data; (b) unauthorized access, acquisition, or unauthorized or unlawful Processing of Personal Data; (c) unauthorized intrusion into, control of, access to, modification of, or use of any System that is used by the Agent to secure, defend, protect, or Process Personal Data; and (d) event which led the Agent to suspect or would lead a reasonable person exercising a reasonable level of diligence and investigation to suspect that either (a), (b), or (c) has occurred.

Process, Processed, Processes, or Processing: means any operation or set of operations performed on Personal Data, whether or not by automatic means, such as collection, recording, organization, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, blocking, erasure or destruction.

System: any file system, computing system, database, device, equipment, server, website, application, software, storage media, network, infrastructure, networked environment, or domain, including, without limitation, all development, quality assurance, staging, and production environments.

Services:

Amazon DSP Management, namely:

- Assignment of a DSP Account Manager to oversee and optimise Amazon DSP toward agreed performance indicators.
- Access to Amerge View (Agent's proprietary Amazon reporting platform) for reporting on Amazon DSP performance.
- Holding review calls to discuss Amazon DSP performance updates, recent changes and next steps.
- Ongoing email support for inquiries, feedback, instructions, and updates with regards to Amazon DSP.

All services are subject to [Service Levels](#). The Agent reserves the right to modify Service Levels at its discretion.

Subcontractor: any third party engaged by the Agent to provide any part of the Services or any of the Deliverables.

VAT: value added tax chargeable under the Value Added Tax Act 1994.

- 1.2 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.3 A reference to a **company** shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.4 A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.
- 1.5 A reference to a statute or statutory provision shall include all subordinate legislation made from time to time under that statute or statutory provision.
- 1.6 A reference to **writing** or **written** includes fax and email
- 1.7 Any obligation on a party not to do something includes an obligation not to allow that thing to be done.
- 1.8 Any words following the terms **including, include, in particular, for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

2. Performance of the Services

- 2.1 In consideration for the payment of the Fees by the Client, the Agent shall perform the Services for the Client.
- 2.2 The Agent shall ensure that, at all times while this Agreement is in force, it holds all authorisations necessary to supply the Services and to enable it to comply with its other obligations under this Agreement.
- 2.3 The Agent shall not do anything, nor permit anything to be done by its Personnel which is detrimental to the Client's rights in or to the Client's Property.

3. Client obligations

- 3.1 The Client shall cooperate with the Agent and shall provide to the Agent, at the Agent's request, such information concerning the Client, the Client's requirements in respect of the Services as is reasonably necessary to enable the Agent to perform the Services.

4. Fees

- 4.1 In consideration for the provision of the Services in accordance with this Agreement, the Client shall pay the amount referenced on IO plus applicable taxes (if any) to the Agent.
- 4.2 The Agent will invoice for the amount referenced on IO plus applicable taxes (if any) upon either the end date of a campaign (or the earlier termination) or, at the Agent's discretion, on a monthly basis during the term of the Advertising Campaign.
- 4.3 The Client will have 15 days from date of invoice in which to contact the Agent to note any discrepancies or otherwise dispute.
- 4.4 Payment Terms for Invoices will be **30 Days** from receipt of invoice.
- 4.5 All sums payable under this Agreement:
 - (a) are exclusive of any VAT or any other sales tax or duties, which, where applicable, shall be payable by the Client to the Agent in addition; and
 - (b) shall be paid in the relevant currency to the credit of the Agent's bank account, details of which shall be notified to the Client as and when necessary.
- 4.6 The Client shall pay interest on any sum paid late under this Agreement, calculated as follows:
 - (a) Rate: 4% a year above the **Bank of England** base rate from time to time, but at 4% a year for any period when that base rate is below 0%.
 - (b) Period: from when the overdue sum became due, until it is paid.
- 4.7 Client is liable for all costs incurred in recovery if invoice is not paid within 30 days of due date up to and including debt collection fees of up to 20%.
- 4.8 The parties shall retain ownership of their respective Intellectual Property Rights.

4.9 The Client grants to the Agent a non-exclusive, non-transferable, royalty-free licence to use the Client's Intellectual Property Rights in so far as is required to perform the Services.

5. Confidentiality

5.1 **Confidential Information** means all confidential information (however recorded or preserved) disclosed by a party or its Representatives (as defined below) to the other party and that party's Representatives whether before or after the date of this Agreement in connection with the Services including but not limited to:

- (a) the Services;
- (b) This Agreement;
- (c) any information that would be regarded as confidential by a reasonable business person relating to:
 - (i) the business, affairs, customers, clients, suppliers, or plans, intentions, or market opportunities of the disclosing party (or of any member of the group of companies to which the disclosing party belongs); and
 - (ii) the operations, processes, product information, know-how, designs, trade secrets or software of the disclosing party (or of any member of the group of companies to which the disclosing party belongs); and
- (d) any information developed by the parties in the course of carrying out this Agreement.

Representatives means, in relation to a party, its employees, officers, representatives and advisers.

5.2 The provisions of this clause shall not apply to any Confidential Information that:

- (a) is or becomes generally available to the public (other than as a result of its disclosure by the receiving party or its Representatives in breach of this clause);
- (b) was available to the receiving party on a non-confidential basis before disclosure by the disclosing party;
- (c) was, is or becomes available to the receiving party on a non-confidential basis from a person who, to the receiving party's knowledge, is not bound by a confidentiality Agreement with the disclosing party or otherwise prohibited from disclosing the information to the receiving party; or
- (d) the parties agree in writing is not confidential or may be disclosed.

5.3 Each party shall keep the other party's Confidential Information confidential and shall not:

- (a) use such Confidential Information except for the purpose of exercising or performing its rights and obligations under or in connection with this Agreement (**Permitted Purpose**); or

- (b) disclose such Confidential Information in whole or in part to any third party, except as expressly permitted by this clause.
- 5.4 A party may disclose the other party's Confidential Information to those of its Representatives who need to know such Confidential Information for the Permitted Purpose, provided that:
- (a) it informs such Representatives of the confidential nature of the Confidential Information before disclosure; and
 - (b) at all times, it is responsible for such Representatives' compliance with the confidentiality obligations set out in this clause.
- 5.5 A party may disclose Confidential Information to the extent such Confidential Information is required to be disclosed by law, by any governmental or other regulatory authority or by a court or other authority of competent jurisdiction provided that, to the extent it is legally permitted to do so, it gives the other party as much notice of such disclosure as possible and, where notice of disclosure is not prohibited and is given in accordance with this clause 7.5, it takes into account the reasonable requests of the other party in relation to the content of such disclosure.
- 5.6 Each party reserves all rights in its Confidential Information. No rights or obligations in respect of a party's Confidential Information other than those expressly stated in this Agreement are granted to the other party, or to be implied from this Agreement.
- 5.7 The provisions of this clause 7 shall continue to apply after termination of this Agreement.

6. Data Protection

- 6.1 Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause 8 is in addition to, and does not relieve, remove or replace, a party's obligations or rights under the Data Protection Legislation. In this clause 8, "Applicable Laws" means (for so long as and to the extent that they apply to the Agent) the law of the European Union, the law of any member state of the European Union and/or Domestic UK Law; and Domestic UK Law means the UK Data Protection Legislation and any other law that applies in the UK.
- 6.2 The parties acknowledge that for the purposes of the Data Protection Legislation, the Client is the Controller and the Agent is the Processor.
- 6.3 Without prejudice to the generality of clause 8.1, the Client will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the Personal Data to the Agent for the duration and purposes of this Agreement.
- 6.4 Without prejudice to the generality of clause 8.1, the Agent shall, in relation to any Personal Data processed in connection with the performance by the Agent of its obligations under this Agreement:
- (a) process that Personal Data only on the documented written instructions of the Client unless the Agent is required by Applicable Laws to otherwise process that Personal Data. Where the Agent is relying on laws of a member of the European Union or European Union law as the basis for processing Personal Data, the Agent shall promptly notify the Client

of this before performing the processing required by the Applicable Laws unless those Applicable Laws prohibit the Agent from so notifying the Client;

- (b) ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the Client, to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of its systems and Services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);
- (c) ensure that all personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential; and
- (d) assist the Client, at the Client's cost, in responding to any request from a Data Subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
- (e) notify the Client without undue delay on becoming aware of a Personal Data Breach;
- (f) at the written direction of the Client, delete or return Personal Data and copies thereof to the Client on termination of the Agreement unless required by Applicable Law to store the Personal Data; and
- (g) maintain complete and accurate records and information to demonstrate its compliance with this clause 8.
- (h) indemnify the Client against any loss or damage suffered by the Client in relation to any breach by the Agent of its obligations under this clause 8.

7. Anti-Bribery and Anti-Corruption

7.1 The Agent shall:

- (a) comply with all applicable laws, statutes, regulations and codes relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010 (Relevant Requirements), and not engage in any activity, practice or conduct that would constitute an offence under sections 1, 2 or 6 of the Bribery Act 2010 if that activity, practice or conduct had been carried out in the UK;
- (b) have, maintain in place and enforce throughout the Term its own policies and procedures to ensure its compliance with the applicable Anti-Corruption Laws and Anti-Corruption Policies; and
- (c) promptly report to the Client any request or demand for any undue financial or other advantage of any kind received by the Agent in connection with the performance of this Agreement.

- 7.2 With respect to any of the Agent's Personnel who perform services or provide goods in connection with this agreement, the Agent shall:
- (a) ensure that any such Personnel are aware of and comply in all material respects with the Anti-Corruption Laws and Anti-Corruption Policies; and
 - (b) be directly liable to the Client for any breach by such Personnel of the Anti-Corruption Laws or Anti-Corruption Policies.
- 7.3 Breach of this clause 9 shall be deemed a material breach under clause 12.1(a).

8. Authority

Each party represents and warrants to the other that it has the authority and requisite corporate power to enter into this Agreement without obtaining the consent of any third party.

9. Limitation of liability

- 9.1 **No consequential damages.** Except with respect to: (a) death or personal injury caused by the agent's negligence and (b) damages arising from the agent's fraud or fraudulent misrepresentation, in no event shall the agent be liable for any incidental, enhanced, exemplary, special, punitive, indirect, or consequential damages of any kind, including, without limitation, lost profits, lost data, lost revenues, and loss of business opportunity, regardless of whether the agent was aware or should have been aware of the possibility of such damages.
- 9.2 **Limitation of liability.** Except with respect to: (a) death or personal injury caused by the agent's negligence and (b) damages arising from the agent's fraud or fraudulent misrepresentation, in no event shall the agent's aggregate liability under this agreement, whether arising out of or related to breach of contract, tort (including negligence) or otherwise, exceed the fees paid to agent pursuant to this agreement in the 12-month period preceding the event giving rise to the claim.
- 9.3 **No liability for claims not notified within 6 months.** Unless the client notifies the Agent that it intends to make a claim in respect of an event within the notice period, the other party shall have no liability for that event. The notice period for an event shall start on the day on which the party wishing to make a claim became, or ought reasonably to have become, aware of the event having occurred or it having grounds to make a claim in respect of the event and shall expire 6 months from that date. The notice must be in writing and must identify the event and the grounds for the claim in reasonable detail.

10. Termination

- 10.1 Without affecting any other right or remedy available to it, either party may terminate this Agreement with immediate effect by giving written notice to the other party if:
- (a) the other party commits a material breach of any term of this Agreement which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 14 days after being notified in writing to do so;
 - (b) the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company or

limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;

- (c) the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than (being a company) for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
- (d) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that other party (being a company) other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
- (e) an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over the other party (being a company);
- (f) the holder of a qualifying floating charge over the assets of that other party (being a company) has become entitled to appoint or has appointed an administrative receiver;
- (g) a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party;
- (h) 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 the other party's assets and such attachment or process is not discharged within 14 days;
- (i) any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 12.1(b) to clause 12.1(h) (inclusive); or
- (j) the other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business

11. Consequences of termination

11.1 On expiry or termination of this Agreement:

- (a) the Agent shall immediately cease all further performance of the Services;
- (b) the Agent shall immediately cease all further use of the Client's Intellectual Property;
- (c) the Agent shall be entitled to invoice the Client for all outstanding properly incurred Fees and the Client shall pay these in accordance with clause 5.

11.2 Termination or expiry of this Agreement shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the Agreement which existed at or before the date of termination or expiry.

11.3 On termination or expiry of this Agreement, the following clauses shall continue in force: clause 1.1 to clause 1.10 (inclusive), clause 6, clause 7, clause 11, clause 13, and clause 15 to clause 26.

12. Notices

12.1 Any notice or other communication given to a party under or in connection with this Agreement shall be in writing and shall be:

(a) delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or

12.2 Any notice or communication shall be deemed to have been received:

(a) if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address;

(b) if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting or at the time recorded by the delivery service.

12.3 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

13. Severance

13.1 If any provision or part-provision of this Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of this Agreement.

13.2 If one party gives notice to the other of the possibility that any provision or part-provision of this Agreement is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

14. Waiver

No failure or delay by a party to exercise any right or remedy provided under this Agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

15. Entire Agreement

15.1 This Agreement constitutes the entire Agreement between the parties and supersedes and extinguishes all previous Agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

- 15.2 Each party acknowledges that in entering into this Agreement it does not rely on any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this Agreement.
- 15.3 Each party agrees that it shall have no claim for innocent or negligent misrepresentation based on any statement in this Agreement.
- 15.4 Nothing in this clause shall limit or exclude any liability for fraud.

16. Variation

No variation of this Agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

17. No partnership

- 17.1 Nothing in this Agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties.
- 17.2 Each party confirms it is acting on its own behalf and not for the benefit of any other person.

18. Assignment and other dealings

- 18.1 The parties shall not assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights and obligations under this Agreement without the prior written consent of the other party provided that a party may assign any claims it has under this Agreement to third party.

19. Further assurance

Each party shall use all reasonable endeavours to procure that any necessary third party shall, promptly execute and deliver such documents and perform such acts as may reasonably be required for the purpose of giving full effect to this Agreement.

20. Counterparts

- 20.1 This Agreement may be executed in any number of counterparts, each of which when executed shall constitute a duplicate original, but all the counterparts shall together constitute the one Agreement.
- 20.2 Transmission of the executed signature page of a counterpart of this Agreement by (a) fax or (b) email (in PDF, JPEG or other agreed format) shall take effect as delivery of an executed counterpart of this Agreement. If either method of delivery is adopted, without prejudice to the validity of the Agreement thus made, each party shall provide the others with the original of such counterpart as soon as reasonably possible thereafter.

21. No Third-party Beneficiaries

This agreement benefits solely the parties hereto and their respective permitted successors and assigns, and nothing in this agreement, express or implied, confers on any other person any legal or equitable right, benefit, or remedy of any nature whatsoever under or by reason of this agreement.

22. Governing law

This Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of New York State.

23. Jurisdiction

Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Agreement or its subject matter or formation (including non-contractual disputes or claims).

24. Start Date

This Agreement has been entered into on the date stated on the IO agreement.