

# General Terms Of Service And Conditions

## of Winston bros., s.r.o. Company

Id No: 45705399, with registered office at Štúrova 30, 949 01 Nitra, Slovak republic  
registered in the Commercial Register of the Municipal Court in Nitra, Section Sro, Insert 38463/N

## I. INTRODUCTORY PROVISIONS

1. These General Terms and Conditions /hereinafter the "GTC"/ of commercial company Winston bros., s.r.o., Company Id No. 45705399, with registered office in Nitra, Štúrova 30, postal code: 949 01, registered in the Commercial Register of the Municipal Court in Nitra, Section Sro, Insert 38463/N /hereinafter the "Provider"/ govern the mutual rights and obligations between the Provider and an individual who is an entrepreneur (as part of his or her business activities), or a legal entity, /hereinafter the "Client"/ arising in connection with the provision of service based on using the BlueWinston Application, which is intended for the management of PPC campaigns in PPC system Google AdWords. The BlueWinston Application is located online at: <https://www.bluewinston.com/>.
2. Provisions diverging from these GTC can only be negotiated in a contract. Diverging provisions in a contract or other arrangements between the Contracting Parties shall take precedence over these GTC.
3. The provisions of the GTC are published at <https://www.bluewinston.com/>. The GTC are available in both the Slovak and English languages. In the event of a conflict between different language versions, the Slovak version shall take precedence.
4. The wording of the GTC may be amended or supplemented by the Provider. The Provider shall notify the Client about any such amendment in an appropriate manner (via e-mail entered in the BlueWinston Application registration is sufficient) at least 30 days in advance. An amendment shall be effective towards the Client on the date specified in such notification. Unless the Client agrees to such an amendment of the GTC, he or she shall be entitled to give notice to the contract as of the effective date of such an amendment. The Client shall deliver the notice to the contract no later than one day before the effective date of the amendment.

## II. DEFINITION OF TERMS

**"Contract"** – a service contract for Internet applications concluded between the Provider and the Client, the subject of which is the provision of the BlueWinston Application for creating and managing PPC campaigns published at <https://www.bluewinston.com/>, entered into via the procedure pursuant to Article III hereof.

**"BlueWinston Application"** – an application intended to manage PPC campaigns on PPC advertising system Google AdWords, which the Client manages through the Provider's administration interface. The BlueWinston Application is a work under Act No. 185/2015 Coll., Copyright Act. BlueWinston is protected by copyright as a computer program, as well as its individual modules, contained databases, and graphic elements that are part of the software. The Provider (Winston bros., s.r.o.) is the executor of all proprietary copyrights to BlueWinston and the licensor, including all of the modules created on it.

**“PPC system”** – pay-per-click; advertising systems allowing advertisers to place their advertisements on the Internet, whereas each placement is paid only when a user clicks the advertiser’s ad (Google AdWords).

### **III. ENTERING INTO THE CONTRACT AND ITS VARIATIONS**

1. The Client registers at <https://setup.bluewinston.com/Account/Register> using his/her selected e-mail address, telephone and a password of his/her choice. The Client is required to protect these access data from misuse; the Provider is not obliged to compensate any damage caused by potential misuse of such data by a third party. As part of the registration, the Client shall provide his/her identification data. The Client is obliged to notify the Provider immediately of any change to such data.
2. The Client understands that he/she is providing the Provider with his/her personal data and that he agreed to this registration process, because processing of this data does require the Client’s consent pursuant to Act No. 18/2018 Coll., on the Protection of Personal Data, as they are processed for the purpose of providing BlueWinston Application services in accordance herewith. The Client – natural person further consents with the processing of his/her e-mail address in order to be sent commercial communications about services offered by the Provider that are related to the BlueWinston Application. Consent is granted for the duration of the service provision, and for 2 years after termination thereof. The data shall be retained for the duration of the service, afterwards for a period of 10 years for the purpose of sending commercial communications, and for a period of 5 years from the termination of the provision of services due to the keeping of the accounting records in accordance with the Accounting Act. The Client is entitled to withdraw his/her consent at any time by sending an e-mail to [support@bluewinston.com](mailto:support@bluewinston.com).
3. Upon registering, a user account is created for the Client in BlueWinston. Upon first synchronizing the user account with an advertising system, the Client’s trial license is launched to use BlueWinston for the next 30 days free of charge. The Provider can extend the trial license at The Client’s request. If the Client’s trial license expires without requesting any extension or demonstrating interest in any of the paid tariffs offered, the Provider is entitled to suspend synchronization and delete his/her campaigns generated via BlueWinston Application of the Client’s BlueWinston account with the advertising systems after 30 days. Meanwhile campaigns generated via BlueWinston Application under the Client’s BlueWinston account will be automatically paused in AdWords account and update process will be also disabled. The trial license agreement is concluded upon the Client’s account in BlueWinston being linked to advertising system AdWords.
4. After the trial license has expired, the Provider shall contact the Client using the telephone number or e-mail address entered by him-/herself and invite him/her to enter into a contract within the scope of any of the tariffs published at <https://www.bluewinston.com/>, or any of other tariffs that the Provider can send to the Client’s e-mail address entered when registering for the Application. Invitation to enter into a contract within the scope of any tariff shall be deemed as the Provider’s proposal to enter into the Contract. A contract within the scope of one of the paid tariffs is concluded upon the payment of the fee in the amount of the selected tariff for the first period.
5. The Application automatically evaluates the volume of products within XML product data feed/s used in BlueWinston campaigns by the Client. The License fee is based on those number of products according to actual price list published by the Provider at <https://www.bluewinston.com/pricing>.
6. Under the Contract, the Provider agrees to provide the Client with a non-exclusive license to use BlueWinston as an unprocessed work in its original form, and only for his/her business

purposes, to the extent and under the conditions defined herein and by the selected tariff. The Client agrees to pay the price specified in the price list for each offer.

7. The license for a monthly (30days) / quarterly (90 days) period is created by paying the license fee in full.
8. The Contracting Parties may also conclude the Contract in writing. In such case the arrangements of these Commercial Terms on entering into the Contract shall apply appropriately. Any derogating provisions in such a Contract shall prevail over the provisions herein.

#### **IV. RULES FOR USING THE BlueWinston Application**

1. The Client registers under his/her username, telephone and password at <https://setup.bluewinston.com/Account/Register>. Based on this registration, the Provider shall allow the Client to enter input data on his/her products and marketing campaigns into the BlueWinston Application interface to be processed in it; the Client can try out how the BlueWinston Application works. Consequently, he/she can test the BlueWinston Application's real performance based on a trial license.
2. After entering into the Contract, the Client is entitled to link his/her PPC account managed by a third party with the BlueWinston Application, whereas this linking will occur through API interface to synchronize advertisement groups and keywords with PPC system. The Provider shall not be is not liable for any malfunction of the Application if the PPC system operator has no API available.
3. Creation of campaigns will be carried out in PPC system under accounts owned by the Client. The Client agrees that BlueWinston will access his/her accounts through the OAUTH access system for Google AdWord. Optionally can client agree to link his/her AdWords account to the Provider's "My Client Center" (bluewinston.com@gmail.com). For the purposes of linking, the Client will be contacted by the Provider via e-mail or telephone. This link will enable better technical support from BlueWinston and provide full technical support for AdWords accounts.
4. During the Contract term, the Provider agrees to provide the Client with technical support or assistance if requested by the Client, to the extent and scope that is common with other marketing campaign management applications. The Client may request such support or assistance by contacting the administrator via e-mail at: [support@bluewinston.com](mailto:support@bluewinston.com), or directly in the chat application located in the BlueWinston Application or on the BlueWinston website. Support and assistance is available Monday to Friday between 9:00 AM and 5:00 PM (CET).
5. The Provider agrees to inform the Client via direct mail (in particular about the due date of individual payments) or through a blog or newsletters (in particular about news and other matters related to the provision of services).
6. The Provider is entitled to restrict or suspend provision of BlueWinston Application services if their provision is prevented by reasons originating from the activities of third parties or force majeure (e.g. fire, flood, etc.), or due to a failure on the part of other Providers, if these events objectively could not have been avoided.
7. The Provider accepts no responsibility for the malfunctioning of the PPC system AdWords, or other systems operated by other parties, if these are utilized to use the BlueWinston Application. If such is the case, the Client shall not be entitled to a refund of the price paid for the provision of services.
8. The Provider agrees to make every effort to implement any changes in the APIs of operators' PPC system in advance. However, the Provider accepts no responsibility for the malfunctioning of the BlueWinston Application due to unpredicted changes in the APIs of operators' PPC system that could not have been implemented by the Provider even with due

professional care. If such is the case, the Client shall not be entitled to a refund of the price paid for the provision of services.

9. The Provider shall not be liable for any damage caused by the Client in creating and managing campaigns, or caused by content generated by the Client. The Client is the copyright owner of all content (created texts, keywords, etc.) inserted by the Client into the BlueWinston Application. The Client is fully responsible for the contents of applications created by the Client, and for the accuracy of the information.
10. The Provider shall not be is not liable for any violations of intellectual property rights of any third party arising in connection with the Client using the BlueWinston Application.
11. The Provider shall not be is not liable for any temporary or permanent loss, damage or destruction of the Client's or a third party's data in connection with the use of the BlueWinston Application.
12. The Client shall provide all assistance to the Provider needed to ensure proper provision of services, in particular to pass on all of the necessary information and documents which the Provider asks the Client for, if their provision is needed to accomplish the purpose of the Contract.
13. The Client is not entitled to modify the BlueWinston Application, make it available to third parties, lease it, transfer the license or grant a sublicense to thereto.
14. BlueWinston will be available 24/7 with 99.5 percent availability guarantee, subject to unpredictable and accidental service failures, in the event of malfunctioning of platforms being monitored, changes to their APIs (in this case, the licensor will maximize efforts to adapt the BlueWinston Application to the new API platforms) and similar events that are out of the Provider's control. The Provider agrees to notify Clients about unavailability of the Application due to planned service shutdowns caused by a failure of services provided by third parties (e.g. maintenance of the server room) in advance.

## **V. REMUNERATION /PRICE/ FOR THE PROVISION OF SERVICES, PAYMENT TERMS**

1. Unless otherwise agreed between the Parties, the fee for services (=license fee) provided to the Client under the Contract depends on the total number of products within the XML product data feed/s through the BlueWinston Application, and it is set out in a price list published by the Provider at <https://www.bluewinston.com/pricing>. Prices listed in the pricelist do not include VAT. The Provider is entitled to modify or change the tariff offer unilaterally; the provisions hereof related to the change of these GTC shall apply adequately.
2. The service fee (=license fee) is paid monthly (30 days license) or quarterly (90 days license). The Client shall pay the service fee either via a wire transfer (generated pro forma invoice) or via PayPal by using PayPal account or withdrawn from Client's credit/debit card.
3. Unless otherwise agreed, the Client shall be sent a pro forma invoice for the following license during the current license. The pro forma invoice is payable within 14 days of its delivery to the Client. The pro forma invoice is sent by e-mail from the Provider to the Client's e-mail address under which he/she is registered in the BlueWinston Application, or to a different address provided by the Client. The regular invoice for the payment made on the basis of the pro forma invoice is sent by the Provider within the statutory time limit. The Client agrees to have these documents sent electronically. The date of payment of the price is deemed the day when the payment is credited to the Provider's account.
4. If the Client is overdue with prolonging his/her BlueWinston license, so he/she did not buy next monthly or quarterly license, campaigns generated via BlueWinston Application will be paused in Application and also in AdWords account after last day of current license passed. 30 days after last day of current license passed, the Provider shall be entitled to

suspend synchronization of the Client's BlueWinston account and remove all campaigns generated via the BlueWinston Application.

6. The Provider shall be entitled to cancel the Client's user account and delete his/her user data after one month from the day the Client is overdue with prolonging his/her BlueWinston license.

## **VI. PROTECTION OF CONFIDENTIAL INFORMATION, NON-DISCLOSURE**

1. The Client agrees to keep confidential the Provider's confidential information and trade secrets and not to disclose or make them accessible to third parties, or to use them for his/her own benefit or for the benefit of third parties. In order to avoid any confusion, the Provider defines confidential information as: technical or commercial information of the Provider or any other information of the Provider not publicly available, in particular data, know-how, utilized computer programs, processes, designs, concepts, specifications, pricing information, business, financial and marketing plans, information, other intellectual property items created by the Provider protected by law, and other information that are designated as confidential by the Provider.
2. Likewise, the Provider agrees to keep confidential the Client's confidential information and trade secrets and not to disclose or make them accessible to third parties, or to use them for his/her own benefit or for the benefit of third parties.
3. The Parties agree to protect confidential information so as to prevent its disclosure to third parties, and they agree not to disclose confidential information or make it accessible to third parties in any way.
4. The validity of the obligation of confidentiality with respect to confidential information, trade secrets, etc., i.e. not to disclose the information or make it accessible to third parties, is not limited by time, and the Parties shall be obliged to comply with it even after any termination of the Contract.
5. The Client grants the Licensor consent to the use of his/her person, incl. logo, as a business reference. Also grants the Licensor any data from campaigns generated via BlueWinston Application for preparing case studies or other marketing materials which are necessary or used to acquire new leads and potential customers for BlueWinston Application. The Licensor will not use and show to the third parties any informations about sales or height of turnover thanks to BlueWinston campaigns.

## **VII. DURATION OF THE CONTRACT, TERMINATION**

1. Unless otherwise agreed in the Contract or by the consensus of Parties, the Contract is concluded for an indefinite period of time.
2. The Provider shall provide the services to the Client throughout the duration of the Contract. However, providing services may be suspended by the Provider:
  1. for the duration of an obstacle on the Provider's part making it objectively impossible to provide some of the services stipulated under the Contract; or
  2. in other cases allowed by the Contract or these GTC.
3. The Provider shall be entitled to terminate provision of services under this Contract unilaterally, and to terminate the Contract in the event that the Client's conduct represents a material breach of obligations arising from the Contract or the GTC. A material breach of the Contract includes:
  1. if the Client is overdue with any payment for more than 30 calendar days;
  2. repeated failure to fulfil obligations under the Contract and/or these GTC;

3. using the services provided in violation of the Contract, these GTC, or applicable laws and regulations, good morals and common ethical values /e.g. uploading pornography, etc./.
4. The Client shall be entitled to terminate the Contract in the event that:
  1. BlueWinston will be repeatedly unavailable in excess of the guaranteed percentage under Article IV (14).
  2. the Provider uses access data to the Client's account in PPC system for any purpose other than to fulfil the Contract.
5. The notice of termination must be made in writing and sent to the other Party to the e-mail provided by the Client at the time of registration (in the event of a notice by the Provider), or to [support@bluewinston.com](mailto:support@bluewinston.com) (in the event of notice by the Client). Where possible in the light of the nature of termination reasons, the notice must be preceded by at least one notification with a request to remedy the situation.
6. The termination shall take effect on the day following the date on which the notice of termination was sent to the other Party.
7. Both the Provider and the Client shall be entitled to terminate the Contract via a notice of termination in writing, even without giving a reason. The notice period is 2 months and begins on the first day of the month following the month in which the notice of termination was delivered to the other Party.

## **VIII. OTHER AND CLOSING PROVISIONS**

1. The Contract between the Client and the Provider shall come into force and effect when it is concluded.
2. For the purposes of delivery of documents, the Parties have agreed that the effectiveness of any act shall also be preserved in the case where one Party acts in writing and sends it by means of a postal service to the registered address of the other Party. Such a document shall be deemed to have been delivered on the third day after its demonstrable sending.
3. If any provision of the Contract or these GTC becomes invalid or unenforceable, such invalidity or ineffectiveness shall not affect the other provisions of the Contract or these GTC.
4. The contractual relationship and disputes arising therefrom shall be governed by Act No. 40/1964 Coll., Civil Code, as amended. The court competent to resolve disputes arising from this Contract or related thereto is the general court of the Provider. In the event of an international element, the law of the Slovak Republic shall be applicable.
5. The General Terms and Conditions are in two language versions. In the event of any disputes, the Slovak version shall take precedence.
6. These General Terms and Conditions supersede all previous Contractual Terms and Conditions and are effective from 1 March 2018.