

# Creatively Yours - Terms of Business

## Definitions

<b>"We", "us", "our", "ourselves"</b>	Creatively Yours Ltd.
<b>"You", "your", "yourself"</b>	refers to you, our customer.
<b>"goods"</b>	includes materials and media in both tangible and intangible form.
<b>"services"</b>	includes the supply of goods.
<b>"this agreement"</b>	means the contract between you and us
<b>"the Work"</b>	means the services we are to perform as set out in our proposal and such additional services as we may agree to perform for you.

## Our Obligations

We will:

- **perform the Work** with reasonable care and within a reasonable timescale according to the nature and extent of the Work. Time is not of the essence nor is it capable of being made of the essence, even if you have made known to us a specific purpose or event for which you require the Work. Any timescales we give you are indicative only, do not amount to a legal obligation and are dependent upon your co-operation as and when we require it;
- **inform you** when in our view the Work is practically complete: save in the absence of good faith on our part, that determination shall be binding.
- **correct** for you free of charge any error in the Work that becomes manifest within 60 days of completion of it:
- use reasonable endeavours to obtain for you the benefit of any **specific warranty** given by the manufacturer of any goods, or the provider of any services used in connection with the Work.
- **grant** to you, in so far as we are legally able to do so, an irrevocable worldwide license to use for any lawful purpose connected with your business any copyright materials and other intellectual property we may create for the sole purpose of performing the Work. That license will take effect only when we have received payment of the full price for the Work.

## Your Obligations

You will:

- **give us** all such information, instructions, authorisations, payments on account and assistance within a timeframe as agreed at the commencement of the project or otherwise 2 weeks, that we require in order to perform the Work and to enable us to progress it to completion without avoidable delay. In default, you will on demand reimburse to us without any deduction all additional costs and liabilities we incur and any losses we may suffer because of that default. You warrant the truth of the information you provide;
- **designate a specific person** to represent you in your dealings with us and in ours with you, such person to be our sole point of contact with you in relation to the Work;
- **pay us** such percentage of the quoted price as we may specify on acceptance of our proposal and before we commence any part of the Work: you agree that this is not refundable once we have started on the Work;
- **pay us** the balance of the quoted price for the Work plus any additional charges for extra work, variations, costs of delivery of goods and materials to your premises, travel and subsistence expenses and VAT as appropriate (together, "the full price"), without any deduction whatsoever, **in cleared funds** on the due date. The due date shall be the date or dates agreed between you and us and in default of agreement shall be seven days following delivery to you of our invoice. In no circumstances will you be entitled to withhold any sum for any reason including (but not limited to) legal or equitable set off or counterclaim;
- **agree that** in the event that agreed invoice payment dates are missed, then we reserve the right to remove or reduce credit terms back to either our seven-day standard, or remove the credit facility altogether, where all work would need to be paid for on a pro-forma basis.
- **pay us** on demand our charges for renewal fees or other recurring charges and in any event prior to our having to pay any third-party fees or charges connected with them;
- **pay us** simple interest at 8% over the base rate of the Bank of England on all outstanding amounts from the due date for payment until actual payment, calculated on a daily basis. This does not prevent us from taking other steps to enforce payment or exercise any lien we may have over any goods if full payment is not received by the due date.
- **pay us** any Third Party costs involved in the recovery of any outstanding amounts plus any additional costs incurred in collection which will be added to the outstanding amount and will continue to accrue interest until the full payment is received.
- **pay us** the outstanding balance if requested information, images or written content have not been provided within 14 days of the request and that these are all that stop the project being completed.
- **obtain any necessary permissions** and pay any fees for the reproduction of images that you require us to use in the course of the Work;
- **be solely responsible** and liable for the content of any website that forms part of the Work;
- **indemnify us** fully for all our losses, costs and expenses resulting from any infringement of any rights of any third party or from damage suffered by any third party and which, in either case, arises from the creation, use, possession or ownership of the Work;
- **give us** at least two months' prior notice in writing prior to the annual renewal date if you wish to cancel any annually recurring service we may provide. These include but are not limited to Hosting Provision, Domain Name Renewal, E Mail Provision and Maintenance Contracts.
- **not entice** any employee or supplier of ours to carry out any work for you, directly or indirectly, similar to any of the services which we provide, without our prior written consent. Without prejudice to any other remedy we may have, if you are in breach of this clause, you will pay to us as liquidated damages a fee for the introduction of that person. In the case of a person employed by you, that fee shall be calculated as 20% of the gross remuneration including benefits payable in the first year of employment. In the case of a supplier engaged by you, that fee shall be calculated as 20% of the gross value of the services performed by that person in the first year of engagement.

## Payment Terms

Upon commencement of work with us we may carry out financial or credit checks on you or your company before offering extended payment terms. Our standard terms are 7 days from the date of the invoice, but other terms may be offered following discussion, confirmation in writing, and at our discretion.

In the event of late payment of our invoices the following procedure will be followed:

7 days past the due date we will cease any current work and not take on any additional purchases such as domain names, 3<sup>rd</sup> party plugins, or ongoing licences until the outstanding amounts are paid. At the same time, all outstanding invoice due dates will be accelerated to become payable along with the overdue invoice.

21 days past the due date a letter will be sent to you detailing the next steps that we will take to recover the sums owed. This letter will specify the dates for each action to be taken which may include but are not limited to, suspension of all the services we provide to you and court action should it become necessary. The key dates are as follows:

- If no payment is received 7 Days from the date of the letter, we will suspend all services that we provide to you. Reconnection of these services will carry a charge which will be specified within the letter.
- If no payment is received 14 Days from the date of the letter, we will commence legal action and file a claim against you with the court, at which point you will be liable for any interest accrued as well as any court fees.

## Other Agreements

- These terms and conditions prevail over any that you may put forward unless we specifically accept the latter in writing.
- Our proposal contains only a high-level specification of the Work. If you require a detailed specification, you will pay our additional charges, in such amount as we shall determine, for this service.
- If you wish to request any change to any part of any specification you will confirm this in writing to us. We shall not be obliged to proceed with any such change unless and until you have agreed our additional charges, if any, for that change.
- Our work in designing and creating your website is a whole project and is not divisible between the front and back-end functions in either time or money. However, we shall be entitled to charge you a reasonable sum, such amount to be in our absolute discretion (but taking account of the non-refundable payment under clause 3.2), for all work carried out if this agreement is terminated prior to practical completion of the Work.
- We may terminate this agreement or the provision of any service if any payment due to us has not been paid by the due date for that payment or if you fail to provide any information, instruction, authorization, permission or assistance which we require from you or you to obtain in order to enable us to complete the Work is not provided within the timeframe given in Section 3.1 or within 21 days of our giving to you formal notice to provide it.
- Without prejudice to clause 4.5, we may increase the price for the Work if you fail to provide any item referred to in that clause or if any information you give us proves to be untrue and in either case extra work is required on our part as a result.
- The implied terms set out in the Sale of Goods Act 1979 sections 12 to 15 inclusive and the Supply of Goods and Services Act 1982, sections 2 to 5 and 13 to 15 inclusive (or any statutory replacement or modification of any of them) are excluded.

- We will not release goods to you until you have paid the full price. In the meantime, we shall have a lien over them until the full price has been paid. If, nevertheless, we do release goods to you we retain title to them until such time as you have paid the full price.
- We shall own and there shall be transferred to us as may be necessary all intellectual property rights created in connection with the Work or as a result of it. We shall also retain sole and exclusive rights to any underlying software applications used at any time for the purpose of or in connection with the Work.
- You will not rely on, and we shall not be liable for any advice we may give during the course of the Work.
- The total of our liability in contract, tort, breach of statutory duty or otherwise shall not exceed the full price for the Work.
- We shall not be liable for any default of any third party whose services we engage in connection with the Work if we have identified the fact of their engagement to you.
- We shall not be liable under any circumstances for indirect, incidental, or consequential losses, including (but not limited to) loss of business or profit, loss of information, business interruption or downtime. You are advised to take out your own insurance against these and similar risks.
- No third party may enforce any term of this agreement.
- No variation in the agreement shall be valid unless it is in writing and signed by a director or principal of both parties.
- These terms of business, with the information set out in the proposal, comprise the entire agreement between you and us. You agree that you have not relied upon any representations or promises other than those contained in this document.
- Either party may cancel the agreement if the other ceases to trade or becomes subject to a petition for bankruptcy or winding up or to administrative receivership or initiates proposals for a voluntary arrangement but without prejudice to our right to charge for the Work.
- Notices may be served at the addresses for the parties set out in our proposal unless and until any party notifies the other of another address for service.
- This agreement is to be construed in accordance with English law and any dispute between the parties shall be subject to the exclusive jurisdiction of the English court.

## **Creatively Yours Privacy Policy**

The Data Protection Act 1998 requires us to deal fairly with information which we receive about you or that we collect from you whilst you visit our site. So this notice will describe what we will do with this information and with whom it might be shared and under what circumstances.

At Creatively Yours we are committed to safeguarding and preserving the privacy of our visitors.

We do update this Policy from time to time so please do review this Policy regularly.

### **Information We Collect**

In running and maintaining our website we may collect and process the following data about you:

- Information about your use of our site including details of your visits such as pages viewed and the resources that you access. Such information includes traffic data, location data and other communication data.
- Information provided voluntarily by you. For example, when you register for information or make an enquiry.
- Information that you provide when you communicate with us by any means. For example

## **Credit Card Information**

If you choose to avail of our services, you may need to give personal information and authorisation to obtain information from various credit services. For example, you may need to provide the following information:

- Name
- Mailing address
- Email address
- Credit card number
- Name on credit card
- Credit card billing address
- Business and home phone number.

## **Email Information**

If you choose to correspond with us through email, we may retain the content of your email messages together with your email address and our responses. We provide the same protections for these electronic communications that we employ in the maintenance of information received by mail and telephone.

## **Use of Cookies**

Cookies provide information regarding the computer used by a visitor. We may use cookies where appropriate to gather information about your computer in order to assist us in improving our website. We may gather information about your general internet use by using the cookie. Where used, these cookies are downloaded to your computer and stored on the computer's hard drive. Such information will not identify you personally. It is statistical data. This statistical data does not identify any personal details whatsoever

You can adjust the settings on your computer to decline any cookies if you wish by activating the reject cookies setting on your computer.

Our advertisers may also use cookies, over which we have no control. Such cookies (if used) would be downloaded once you click on any advertisements on our website.

## **Use of Your Information**

We use the information that we collect from you - for example from an email:

- To provide information to you that you request from us relating to our products or services.
- To provide information to you relating to other products that may be of interest to you. Such additional information will only be provided where you have consented to receive such information.
- To inform you of any changes to our website, services or goods and products.

If you have previously purchased goods or services from us we may provide to you details of similar goods or services, or other goods and services, that you may be interested in.

Where your consent has been provided in advance we may allow selected third parties to use your data to enable them to provide you with information regarding unrelated goods and services which we believe may interest you. Where such consent has been provided it can be withdrawn by you at any time.

## **Storing Your Personal Data**

In operating our website, it may become necessary to transfer data that we collect from you to locations outside of the European Union for processing and storing. By providing your personal data to us, you agree to this transfer, storing or processing. We do our utmost to ensure that all reasonable steps are taken to make sure that your data is treated stored securely.

Unfortunately the sending of information via the internet is not totally secure and on occasion such

information can be intercepted. We cannot guarantee the security of data that you choose to send us electronically, sending such information is entirely at your own risk.

### **Disclosing Your Information**

We will not disclose your personal information to any other party other than in accordance with this Privacy Policy and in the circumstances detailed below:

1. In the event that we sell any or all of our business to the buyer.
2. Where we are legally required by law to disclose your personal information.
3. To further fraud protection and reduce the risk of fraud.
4. Only to businesses associated to Creatively Yours

### **Third Party Links**

On occasion we include links to third parties on this website. Where we provide a link, it does not mean that we endorse or approve that site's policy towards visitor privacy. You should review their privacy policy before sending them any personal data.

### **Access to Information**

In accordance with the Data Protection Act 1998 you have the right to access any information that we hold relating to you. Please note that we reserve the right to charge a fee of £10 to cover costs incurred by us in providing you with the information.

### **Contacting Us**

Please do not hesitate to contact us regarding any matter relating to this Privacy Policy at [info@creatively-yours.co.uk](mailto:info@creatively-yours.co.uk)