

## **Terms of Business**

Last revision: March 2022

Use of Dupont Creative, Inc. services are subject to the following terms and conditions. These apply to the exclusion of all other terms and conditions unless stated otherwise in any official correspondence.

### **1. Definitions**

- a) In these terms "we/us/our/Dupont Creative" means Dupont Creative, Inc. and "you" means the "Client", as identified in the Proposal.
- b) The "Contract" or "Agreement" means the agreement between you and us based on this document and our estimate, the "Proposal".
- c) The "project" and/or "development" means the work to be carried out as specified in the Proposal.

### **2. Variation**

These terms and conditions may be subject to amendment from time to time. The latest version is available at <https://dupontcreative.com/terms.pdf>.

If you have any uncertainties about these conditions as they might apply to you it is your responsibility to clarify the situation by contacting us before your services commence.

### **3. Content**

- a) Unless otherwise agreed in your Proposal or covering correspondence it is your responsibility to provide us with the required information about your business. We accept no responsibility for errors in content supplied by you.
- b) You grant Dupont Creative, Inc. permission to utilize logos and any other company identity for the purposes of the development.
- c) You agree to indemnify Dupont Creative, Inc. from any and all claims arising from your negligence or inability to obtain proper copyright permissions for any and all content supplied by you to us.
- d) Unless otherwise agreed upon a design credit with a link to the Dupont Creative, Inc. website will appear on the main home page of your website either in text or graphic format. The link will be in keeping with the overall design of the site.
- e) In the event that Dupont Creative, Inc. is unable to complete a Website because of a lack of content (text and/or pictures) due to be supplied by you, then holding text will be added using industry standard "lorum ipsum" text and appropriate library pictures. At this point the Website will be considered completed and invoiced accordingly under our standard payment terms.

#### **4. Design and development**

- a) We will provide you with our estimated timescale for progress and completion of the project and will use reasonable endeavors to meet those timescales.
- b) We shall have no liability to you nor be deemed to be in breach of this Contract if we are delayed in performing or unable to perform any of our obligations under it due to circumstances beyond our reasonable control. This includes delays incurred by slow or failed communication.
- c) The price quoted in your Proposal is a fixed price for the works as specified in the Proposal. If no additional features are requested during development the quoted price is the price you will pay. However, if additional features are requested additional charges may be made at our discretion.
- d) If additional charges are deemed necessary at any stage in the development process we will always notify you beforehand and give you the option of either incurring the fees or declining the feature/work.

#### **5. Payment**

- a) All quotations/invoices are subject to sales tax, if applicable.
- b) Service agreement and search engine marketing program payments will be invoiced thirty days in advance of the anniversary of the initial payment.
- c) Where a credit card authorization is on file, your card will be debited for the full invoice amount 7 days after the invoice is issued, unless we receive instructions otherwise from you in writing.
- d) Payments made on your account are not refundable, non revocable, non contestable and, where payment is made by credit card, the Client waives the right of refund and/or to dispute any charges made within the terms set out in this agreement.
- e) Payment must be received in full before the renewal date in order for service to continue uninterrupted.
- f) If payments and requested late payment interest/compensation are not received by us by the due date(s) we reserve the right to suspend your Service Agreement and/or other services until such time as payment is received in full (without prejudice to any other remedy available to us).

#### **6. Rights**

- a) You retain ownership of copyright, trademarks and other intellectual property rights in materials that you provide to us for use in the development.
- b) All copyright, trademarks, patents created, developed, subsisting or used in or in connection with the design and development of the project will be transferred to you on settlement of all outstanding sums due.
- c) Ownership of the Intellectual Property Rights of the development/programming code/design will remain with Dupont Creative

until all outstanding sums due have been paid in full, whereupon ownership will transfer to you.

- d) Intellectual Property Rights of the development/programming code/design are not transferable to any third parties and furthermore, any associated software/systems may not be re-distributed, sold or rented unless otherwise agreed by Dupont Creative, Inc. in writing.

## **7. Content Updates**

- a) If your Service Agreement includes content updates requests to update your content may be made by telephone, email, fax or in writing.
- b) Requests will normally only be dealt with during normal office hours (9:00am-5:00pm Mon-Fri).
- c) In the case of an emergency we may be available out of office hours but no guarantee is provided.
- d) When we receive your update request we will establish if the update falls within the scope of your Service Agreement, and if not, advise you of the cost of the update before starting work.
- e) If you do not have a Service Agreement, our standard rate of \$200 per hour, billed in quarter-hour increments will apply.
- f) It is your responsibility to provide us with the required information to complete your update. Dupont Creative, Inc. takes no responsibility for errors in content supplied by you for the website.
- g) You grant Dupont Creative, Inc. permission to utilize logos and any other company identity for the purposes of creating/modifying the website.
- h) You agree to indemnify Dupont Creative, Inc. from any and all claims arising from your negligence or inability to obtain proper copyright permissions for all content supplied.

## **8. Web Hosting**

- a) Technical specifications for the server equipment used to host your website are available on request. The exact specifications of your server may vary positively over time.
- b) The amount of storage and allowed bandwidth usage (traffic throughput) on your web hosting account is specified in your Service Agreement. If the specified amount is exceeded we may contact you to arrange an appropriate increase in your fees. At our discretion this may result in an interim payment being required to continue service.
- c) We reserve the right to suspend accounts which are deemed to be abusing our systems in any way.
- d) FTP access details to your files are issued on request.
- e) Where FTP access is granted to you or in the case of websites where we empower you to update the site yourselves Dupont Creative, Inc. cannot be held responsible for the content displayed on your website. Furthermore, any use of our web hosting services for holding and/or displaying offensive,

illicit or otherwise illegal material will result in immediate suspension of the web hosting account pending investigation.

- f) Under no circumstances will Telnet or SSH access be granted to end-users as this compromises server security.
- g) Dupont Creative, Inc. guarantees uptime and service as stated by your Service Agreement SLA. This guarantee operates to the exclusion of acts of God, Government regulation, terrorism, civil disorder or other factors over which Dupont Creative, Inc. and partners have no control. In the unlikely event of our failure to uphold our SLA a refund will be offered in proportion to the amount of downtime incurred.

## **9. Email**

- a) POP3 and SMTP email accounts are provided as specified in your Service Agreement.
- b) When embarking on a Service Agreement including email hosting you will be given the appropriate user name and password details for each account and the incoming (POP3) and outgoing (SMTP) mail server name.
- c) Dupont Creative, Inc. cannot and will not provide technical support for troubleshooting problems with your computer.
- d) Requests for changes to user/password combinations will usually be actioned within 24 hours.
- e) The use of Dupont Creative hosting accounts for bulk emailing purposes is strictly prohibited in order to maintain server stability. We therefore operate a 20/minute, 1000/day email limit on all Service Agreement accounts. Any emails above this limit will be returned to sender.
- f) Dupont Creative, Inc. guarantees uptime and service as stated by your Service Agreement SLA. This guarantee operates to the exclusion of acts of God, Government regulation, terrorism, civil disorder or other factors over which Dupont Creative, Inc. and partners have no control. In the unlikely event of our failure to uphold our SLA a refund will be offered in proportion to the amount of downtime incurred.
- g) Where a junk/SPAM filter is provided Dupont Creative, Inc. will make every effort to provide a reliable service but due to the invasive nature of these messages we cannot and will not be held responsible for any genuine email messages inadvertently filtered out or any junk/SPAM which fail to be filtered out.

## **10. Domain Name(s)**

- a) The client is responsible for registering and renewing the domain name(s) themselves, unless otherwise agreed.
- b) Dupont Creative, Inc. reserve the right to make a small charge for any administrative work associated with subsequent hosting or domain name transfers into or out of our facilities.

## **11. Search Engine Promotion**

Where Dupont Creative, Inc. undertakes promotion of your website through Search Engine placement no guarantee is given that rankings can be achieved on particular Search Engines.

## **12. Website Traffic Statistics**

- a) If your Service Agreement includes website traffic statistics you will be given access to our statistics software. This can be accessed securely via any computer with an Internet connection using a unique username/password combination.
- b) Should you suspect that your password has been compromised you can request a new password by email.
- c) The statistics software displays information pertaining to your website visitors (ie origin, pages visited, total hits etc) but can only be used as a guide. We cannot be held responsible for any actions taken based on information gathered using this service.

## **13. Cancellation**

If you wish to cancel your Service Agreement you are required to do so in writing before the annual renewal date of your Service Agreement. Cancellation will only be effective on receipt of such notice. Refunds for Service Agreement payments made or in progress will not be offered or made.

## **14. Internet Connection**

Dupont Creative, Inc. is not responsible for establishing or troubleshooting your Internet connection. This is the responsibility of your Internet Service Provider.

## **15. Reservations**

Dupont Creative, Inc. reserves the right to withdraw services at any time subject to 28 days written notice.

## **16. Confidentiality**

- a) Each party shall treat as confidential all information obtained from the other during the negotiation of, or pursuant to, this Agreement relating to their respective businesses and shall not divulge such information to any person (except to such other party's own employees or consultants who need to know the same) without the other party's prior written consent provided that this clause shall not extend to information which is already public knowledge or becomes so at a future date (otherwise than as a result of a breach of this clause) or which is trivial or obvious.

- b) The Client and Dupont Creative, Inc. agree not to make any statement, written or verbal, to any third party which is reasonably likely to be harmful to the other party to this Contract, or to be injurious to the reputation, business standing or goodwill of the other party at any time in the future; provided, however, that this clause shall not prevent any party or its agents or representatives from any good-faith response to inquiries under oath or in response to a governmental inquiry.
- c) Dupont Creative and the Client acknowledge that breach of this clause may result in serious, irreparable harm and agree to the right of equitable relief (including but not limited to injunctive relief). Should a breach of this clause result in litigation, the prevailing party in the litigation shall be entitled to reasonable costs, expenses and attorney fees associated with the litigation.
- d) Each party shall ensure that its employees, affiliates and consultants are aware of and comply with this clause.

## **17. Warranties**

Dupont Creative, Inc. makes no warranties of any kind, whether express or implied, for the services it provides other than for technical errors and oversights. Dupont Creative, Inc. will not be responsible for any direct, indirect or consequential damages that may result from the use of its services, including loss of data resulting from delays, non-delivery or interruption in service. You acknowledge and agree that Dupont Creative, Inc. cannot guarantee the absence of service interruptions caused by Acts of God or other circumstances beyond our control.

## **18. Indemnity**

All services may be used for lawful purposes only. You agree to indemnify and hold Dupont Creative harmless from any claims resulting from your use of our service that damages you or any other party, including legal fees and the cost of enforcing this contract.

## **19. Liability**

Our total liability to you in contract or in tort arising in connection with this Contract shall not exceed the total price paid by you. We shall have no liability for loss of profits, business, revenue, goodwill or anticipated savings nor for any other indirect or consequential loss.

## **20. Entire Agreement**

The Agreement contains the entire understanding of the parties, there being no promises, warranties, or undertakings, written or oral, other than those expressly set forth herein.

## **21. Severability**

If any provision (or part thereof) of this agreement is found to be invalid, then it shall be stricken and have no effect. The remaining provisions of this agreement shall continue in full force and effect.

## **22. Standard charges**

In the absence of agreed rates our standard rate of \$200 per hour, billed in quarter-hour increments will apply.