



# Terms of Service

Version 1.3 – February 20<sup>th</sup>, 2023

## 1. General Terms

### 1.1. Definitions

- 1.1.1. "Waikiki Creative", "Company", "we", "us", or "our" refers to Waikiki Creative LLC of 758 Kapahulu Ave, Suite # 100-853, Honolulu, Hawaii 96816, United States, its agents, and employees.
- 1.1.2. "Client", "Customer", "You", or "Your," refers to the company, partnership, individual or sole trader entering into the agreement.

### 1.2. Contract Headings

- 1.2.1. The headings and sub-headings of the sections contained in this agreement are for convenience only, and shall not be deemed to control or affect the meaning, operation, or construction of any provision of this agreement.

### 1.3. Jurisdiction & Dispute Resolution

- 1.3.1. The legal jurisdiction of this agreement resides within the State of Hawaii (United States).
- 1.3.2. If any provision of these Terms of Service is found to be invalid by any court having competent jurisdiction, the invalidity of such provision shall not affect the validity of the remaining provisions of the Terms of Service, which shall remain in full force and effect.
- 1.3.3. Any claim, dispute, or controversy brought against us by you shall be resolved exclusively and finally by binding arbitration.
- 1.3.4. Arbitration will be conducted before a single arbitrator and will be limited solely to the dispute or controversy between you and us. The arbitration shall be held in a mutually agreed upon location in person or by telephone.

### 1.4. Acceptance of the Contract

- 1.4.1. All orders are bound by the Terms of Service
- 1.4.2. Should you submit an order to us, or give us instruction (written or verbal) to proceed with any works, the Terms of Sale will be deemed accepted by you upon receipt of that order or instruction by us.
- 1.4.3. You acknowledge and agree that these Terms of Service shall be enforceable against you, without regard to whether or not you have executed and delivered this document to us.
- 1.4.4. The Terms of Service shall be a continuing agreement, and shall apply to the exclusion of all others, including your terms and conditions (whether on your form or otherwise). You acknowledge that these Terms of Service embody the whole agreement between the parties and agrees to be bound by them.

### 1.5. Changes to the Contract

- 1.5.1. From time to time we may update or amend these Terms of Service.
- 1.5.2. It is your responsibility to ensure you are aware of the Terms of Service in force at the time of ordering.
- 1.5.3. We will make reasonable efforts to notify you of any updates or amendments we make to the Terms of Service. Such notification may be communicated via phone, fax, email, written or verbally, and we will also publish the updated Terms & Conditions of Sale on our website.
- 1.5.4. Upon written request, you may obtain a copy of the current Terms of Service contract from us, or via our website ([waikikicreative.com](http://waikikicreative.com)).

### 1.6. Refusal & Prohibited Uses

- 1.6.1. We reserve the right to refuse inclusion in our designs any text, images, or other data which it deems to be immoral, offensive, obscene, illegal, or which violate these Terms of Service. We further reserve the right to refuse to include any submitted materials without providing reason. All advertising material must conform to all standards laid down by all relevant advertising standards authorities.
- 1.6.2. You are prohibited from using the Waikiki Creative website or any of our services under any of the following circumstances: (a) for any unlawful purpose; (b) to solicit others to perform or participate in any unlawful acts; (c) to violate any international, federal, provincial or state regulations, rules, laws, or local ordinances; (d) to infringe upon or violate our intellectual property rights or the intellectual property rights of others; (e) to harass, abuse, insult, harm, defame, slander, disparage, intimidate, or discriminate based on gender, sexual orientation, religion, ethnicity, race, age, national origin, or disability; (f) to submit false or misleading information; (g) to upload or transmit viruses or any other type of malicious code that will or may be used in any way that will affect the functionality or operation of the service or of any related website, other websites, or the internet; (h) to collect or track the personal information of others; (i) to spam, phish, pharm, pretext, spider, crawl, or scrape; (j) for any obscene or immoral purpose; or (k) to interfere with or circumvent the security features of the Service or any related website, other websites, or the Internet. We reserve the right to terminate your use of the service or any related website for violating any of the prohibited uses.

### 1.7. Termination

- 1.7.1. We reserve the right to delay, reject, or cancel an order at any time at our sole discretion. In the event of cancellation, we will be liable to refund to you the balance of any fees paid for any services we have not yet rendered.

- 1.7.2. We reserve the right to delay, reject, or cancel a credit application or credit account at any time at our sole discretion.
- 1.7.3. We may suspend or terminate credit, or cancel any order, at any time without notice at our sole discretion.
- 1.7.4. In the event of contract termination, you will remain liable to repay any outstanding monies owing, including fees described in s3.2 'Default & Recovery of Unpaid Monies' of this agreement.

## 2. Pricing & Quotations

### 2.1. Price Changes

- 2.1.1. All prices quoted by us in any form are understood to be correct at the time of supply but are subject to change without notice. We will not be liable to you for any change in price and may supply orders based on the price in force at the time of supply.

### 2.2. Quotations

- 2.2.1. Any pricing quoted will only be deemed secured by you (up to a maximum of 7 days) with our express authorization, and upon payment of a non-refundable deposit to be calculated by us.

### 2.3. Confidentiality

- 2.3.1. Any quote or proposal that we supply to you is strictly confidential and must not be copied, forwarded, or shown to anyone; in part or in whole; that we may deem to be a competitor of Waikiki Creative. This generally includes other graphic design studios, advertising agencies, creative firms, freelance designers, web developers, and printing companies that offer similar design services.

### 2.4. Taxes

- 2.4.1. All prices are quoted exclusive of any applicable General Excise Taxes (GET) in force at the time of supply, unless stated otherwise. All charges and purchase costs that are, or will be, subject to tax (or any other state or federal taxes, fees, or duties) shall be passed on by us to you and shall be paid by you.

## 3. Ordering & Payment Terms

### 3.1. Payment Terms

- 3.1.1. The payment terms on any order placed by you is at our sole discretion. Prepayment is generally required on all works prior to commencement. Credit terms will only be offered to you where a credit account has been expressly approved by us, following the submission of a credit application form.
- 3.1.2. Payment shall be made in full no later than the due date specified by us, or 30 net days from the date of the invoice (whichever date falls sooner).
- 3.1.3. Where applicable, you agree to maintain your credit account in good standing. We may withhold future orders in the case that prior invoices are unpaid and overdue.
- 3.1.4. Orders for custom-produced goods must be secured with a deposit, at a rate to be determined by the Company (ordinarily between 50% to 100% of the total invoice value). Any deposit received by us from you will only be returned under the provisions of s3.4 'Cancellation'.
- 3.1.5. Online orders placed by international customers located outside Australia may attract a 10% handling levy.

### 3.2. Default & Recovery of Unpaid Monies

- 3.2.1. You agree to pay us all costs, fees, interest charges, and expenses - inclusive of commissions, legal expenses, and disbursements - incurred by us in obtaining or attempting to obtain payment from you for any overdue amount.
- 3.2.2. Clients shall be considered default if an account remains unpaid for 15 days beyond the stated due date of an invoice, or following a returned check. Waikiki Creative shall be entitled to change or suspend services over which we have outright or delegated control, or edit / remove our or your material from any and all systems, until the amount due has been fully paid. Suspension of services and / or the removal of materials does not relieve the client of their obligation to pay the overdue amount.

### 3.3. Customer Purchase Order Forms

- 3.3.1. You may submit orders on your own forms, provided that the form is laid out in a way that it can clearly be identified as a purchase order.
- 3.3.2. Pursuant to s2.1 'Price Changes', services will be charged based on the price in force at the time of supply, regardless of what pricing appears on your form.
- 3.3.3. We will not be bound by any terms or conditions appearing on your purchase order forms or elsewhere.
- 3.3.4. Where you submit a purchase order form, we will endeavour to interpret the form and supply correct services. We shall not be held liable in any way for supplying incorrect services as a result of unclear, erroneous or incomplete purchase order forms. Under these circumstances, you will be solely responsible for any and all costs associated with rectifying the order.

### 3.4. Cancellation

- 3.4.1. Orders placed with us cannot be subsequently cancelled without our written approval.

3.4.2. If we accept cancellation of an order, we shall be entitled (at our discretion) to charge a reasonable fee for any work performed to the date of the cancellation, including a fee for the processing and acceptance of your order and request for cancellation.

### **3.5. Late Payment Charge**

3.5.1. If an invoice is not settled by the due date specified, we may charge you an additional late-payment fee (at our discretion). The calculated fee shall not exceed 10.0% of the invoice total value, and that amount shall remain payable to us.

3.5.2. The late-payment charge applied shall not influence or diminish any other provisions set out in this agreement.

3.5.3. Pursuant to s3.2 'Default & Recovery of Unpaid Monies' of this agreement, all unpaid fees remaining on your account may also be included in any recovery action taken by us.

## **4. Services**

### **4.1. Copyrights, Trademarks & Licensing**

4.1.1. Except for the retained rights described in item 4.1.2 below, all finished materials produced by Waikiki Creative on your behalf will become your property upon full payment of our invoices.

4.1.2. We retain the perpetual right to: (a) use work produced for the Client as part of its portfolio materials in both its online and offline portfolios; (b) add your firm to our client list; and (c) use your work in design competitions, publications, exhibitions, or other promotional purposes.

4.1.3. Any material or ideas prepared or submitted to you that you choose not to produce or for which you have not paid our invoices, within 60 days of submission to you, will remain our property (regardless of whether the physical embodiment of creative work is in your possession in the form of copy, artwork, plates, recordings, films, tapes, etc.) and may be submitted to other clients for their use, provided that such submission or use does not involve the release of any confidential information regarding your business or methods of operation.

4.1.4. By supplying images, text, or any other data to Waikiki Creative, the client grants Waikiki Creative permission to use this material freely in the design. In supplying any text, images, and other data to Waikiki Creative for inclusion in the client's printed or digital branding, marketing collateral, website or other medium, the client declares that it holds the appropriate copyright and/or trademark permissions.

4.1.5. Should Waikiki Creative, or the client, supply an image, text, audio clip, or any other file for use in business cards, flyers, pamphlets, website, multimedia presentation, print item, exhibition, advertisement or any other medium believing it to be copyright and royalty free, which subsequently emerges to have such copyright or royalty usage limitations, the client will agree to allow Waikiki Creative to remove and/or replace the file on the site.

4.1.6. The client agrees to fully indemnify and hold Waikiki Creative free from harm in any and all claims resulting from the client not having obtained all the required copyright, and/or any other necessary permissions.

4.1.7. All design work, where there is a risk that another party make a claim, should be registered by the client with the appropriate authorities prior to publishing or first use or searches and legal advice sought as to its use. Waikiki Creative will not be responsible for any damages resulting from such claims.

### **4.2. Project Timelines**

4.2.1. Waikiki Creative will use its best endeavours to provide genuine and accurate timeframes.

4.2.2. Any timeline indication given by Waikiki Creative of a design project's duration or delivery date is to be considered by the client to be an estimation. Waikiki Creative cannot be held responsible for any project over-runs, whatever the cause. Estimated project duration should be deemed to be from the date that cleared funds are received by Waikiki Creative for the initial payment or by date confirmed in writing by Waikiki Creative.

4.2.3. The client is expected to adhere to deadlines established in the estimate and throughout the project. If a project becomes 7 days overdue due to client not adhering to the timeline and deadlines established in the proposal or contract, the project will be given a new schedule. If this new schedule does not work for the client, an accelerated timeframe may be applied for, with a 50% rush fee charge, however acceptance of the rush is at the sole discretion of Waikiki Creative.

### **4.3. Alterations / Revisions**

4.3.1. Unless otherwise stated in a project proposal or quotation, any revisions requested by the client will be charged at an hourly rate.

4.3.2. The client agrees that changes required over and above the estimated work or required to be carried out after acceptance of the draft design will be liable to a separate charge.

4.3.3. The client also agrees that Waikiki Creative holds no responsibility for any amendments made by any third party, before or after a design is published.

### **4.4. Domain Registration & Web Hosting**

4.4.1. We cannot guarantee the availability of any domain name. Where Waikiki Creative is to register a domain name on behalf of a client, we will endeavour to do so but the client should not assume a successful registration. The client will be responsible for the yearly domain registration fee and any other fees associated with domain registration unless expressly outlined otherwise in a contract.

4.4.2. We do not offer in-house hosting services on Waikiki Creative servers; we sub-contract to web hosting companies and therefore cannot guarantee continuous service; we will accept no liability for loss of service, whatever the cause. We may request that clients change the type of hosting account used if that account is deemed by us to be unacceptable (e.g., poor service, lack of bandwidth, or in any other way insufficient to

support the website). Fees due to the hosting organization are the responsibility of the client and Waikiki Creative are not liable for their payment.

#### **4.5. WebCare Service**

- 4.5.1. WebCare is an ongoing monthly service, with a minimum initial 12-month commitment. Clients must provide at least 30 days written notice in advance of WebCare cancellation.
- 4.5.2. WebCare incorporates 1 (one) round of website content updates per month, provided these are minor changes. Minor changes include textual changes, image changes, and small adjustments to placement of items on a page. It does not include changes we deem to be major, including alterations to colour schemes, site structure, or navigation features. It is the responsibility of the client to contact Waikiki Creative to request a round of minor changes. Any major changes requested will incur billing for the works, in discussion with the client.
- 4.5.3. Webcare includes proactive uptime and performance monitoring, with site functionality maintenance and optimisations where necessary. While we make best endeavours to identify and amend/rectify site downtime or functionality issues in a timely fashion, our ability to do so is dependent on the timeliness of reporting and the scale of the issue. Waikiki Creative will not be held liable to site functionality impairments that result from anything other than natural ageing of the site (such as client or third-party mistakes in administering the site).

## **5. Warranty & Returns**

### **5.1. Warranties**

- 5.1.1. All warranties - whether express or implied, and whether statutory or otherwise - regarding the goods supplied by us as to quality, fitness for purpose, or any other matter are hereby excluded (except so far as any such warranties are incapable of exclusion at law).
- 5.1.2. This agreement contains all the terms and conditions under which you agree to purchase services from us, and any express or implied condition, statement, or warranty (statutory or otherwise) not stated herein is hereby excluded.

### **5.2. Returns / Refunds of Orders**

- 5.2.1. In the unlikely event that a product is faulty, you may return the item to us for testing. If the item fails our quality tests, you may have the option of a repair, replacement, or full refund.
- 5.2.2. No returns will be accepted by us unless expressly authorised in writing.
- 5.2.3. All goods must be returned in original factory condition with all packaging, promotional items, wrapping, bags, boxes etc. unopened.
- 5.2.4. Freight on authorised returns is your responsibility. All returned goods remain your responsibility until physically received by us at our premises.
- 5.2.5. We reserve the right to reject any refund claim at our discretion, except as required by law.
- 5.2.6. An administrative re-stocking surcharge may apply, to be calculated by us at our sole discretion.
- 5.2.7. All claims for shortages, loss, or damage must be made by you in writing to us within 5 business days of receipt of the goods.