

# OYHFOSFBUJWF4FSWJDFT-UE

## Terms & Conditions

Clear communication is important to us. The following pages explain our terms and conditions of trade, costings and procedures. They are intended for your convenience and to aid associates and clients in getting the most from their relationship with Oxygen Creative Services Ltd. Please read them carefully.

### DEFINITIONS

In these Terms of Business 'OXYGEN' means Oxygen Creative Services Ltd. The 'Client' means any individual, firm, company or other party with whom OXYGEN contracts. 'The Services' means any creative services supplied by OXYGEN to the Client. 'The Goods' means any goods whatsoever including but not limited to printed material, manufactured items, computer and Internet based designs & software, new media, artwork and goods supplied by OXYGEN to the Client.

### FORMATION OF CONTRACT

Any Contract shall incorporate and be subject to these Terms of Business and any further terms specified by OXYGEN to the Client in writing. In the event of the Client seeking to incorporate special terms in to the Contract, such special terms shall not apply unless they are expressly accepted and agreed by a director of OXYGEN in writing.

OXYGEN's employees, agents, freelancer operators and associates are not authorised to make any representations concerning the Goods or Services unless confirmed in writing by OXYGEN. In entering into the Contract the Client acknowledges that it does not rely on and waives any claim for breach of any such representation (including representations in brochures, catalogues and other marketing materials) which are not so confirmed.

### ESTIMATE

Any estimate given by OXYGEN is an invitation to the Client to appoint OXYGEN to provide the Services and/or supply the Goods in accordance with these Terms of Business and any other special terms referred to in the estimate. Unless otherwise expressly agreed or earlier withdrawn, all estimates are valid from 30 days from the estimate date.

Unless stated to be a quotation, all prices given by OXYGEN will be estimates only. Where a quotation has been issued OXYGEN will invoice at the quoted price. However, quotations only cover the Goods and/or Services specified.

Any typographical, clerical or other error or omission in any sales literature, quotation, price list, acceptance of offer, invoice or other document or information issued by OXYGEN shall be subject to correction without liability on the part of OXYGEN.

OXYGEN reserves the right by giving notice to the Client at any time to increase the price of the Goods and/or the Services to reflect any increase in the cost to OXYGEN of goods or services provided by 3rd parties which is outside the control of OXYGEN.

Except as may be otherwise agreed in writing by OXYGEN, orders for Goods are accepted on the basis that the price is quoted ex works and that that price is exclusive of any value added tax, special packaging materials, carrier's charges, insurance or customs duties and all other taxes, duties and expenses which the Client shall pay to OXYGEN.

Unless otherwise agreed in writing, all costs are quoted in sterling and all invoices are for payment in sterling.

### PAYMENT AND INVOICING SYSTEM

All invoices are payable within 28 days.

In some cases a non-refundable deposit of 40% will be required from the Client before commencement of work. 60% of full quotation price plus any additional items once the project is completed.

Where a project has been broken down into stages, an invoice may be issued after each stage.

Any queries must be made within 5 working days of receipt of invoice, otherwise it will be deemed to be accepted. In respect of Services OXYGEN will invoice the Client at such times as it shall in its discretion think fit.

Failure to pay invoices on time shall entitle OXYGEN to cease all further work on behalf of the Client without liability in respect of any loss or damage sustained by the Client as a result. Late payment for web site development may result in the web site being taken offline, until such date as payment is made.

If an amount remains delinquent 28 days after its due date, an additional 5% penalty can be added for each month of delinquency. If case collection proves necessary, the Client agrees to pay all fees incurred by that process. All payments will be made in Pound Sterling funds unless agreed upon in writing by both parties.

## DELAYS

OXYGEN shall not be responsible for delays in production that may result in any initial time estimate being breached or over-run.

If work is required for the internet, OXYGEN will not be liable for any time over-run incurred if critical information such as FTP upload codes and passwords is not supplied by the Client when requested.

Any changes made by the Client to the specification or brief may at OXYGEN's discretion result in additional costs which will be billed to the Client.

## GOODS

OXYGEN will invoice for Goods at the date of their delivery (whether or not such delivery constitutes part only of a contract for the sale of Goods to the Client) unless the Goods are to be collected by or on behalf of the Client or the Client fails to take delivery of the Goods, in which event OXYGEN shall be entitled to invoice the Client at any time after OXYGEN has notified the Client that the Goods are ready for collection or (as the case may be) has tendered delivery of the Goods.

## DISPATCH AND DELIVERY

In cases where OXYGEN expressly agrees to include carriage and/or arranges for the insurance of the Goods during transit OXYGEN shall be deemed to be acting solely as an agent of the Client and sub sections 2 and 3 of Section 32 of the Goods Act 1979 shall not apply.

## RISK

Subject to the paragraph below, risk in the Goods shall pass to the Client on delivery.

If for any reason the Client is unable to accept or procure the acceptance of delivery of Goods at the time when the Goods are due and ready for delivery, OXYGEN shall (subject to OXYGEN's storage facilities permitting the same) store the Goods and take all reasonable steps to safeguard them until their actual delivery and the Client shall be liable to OXYGEN for the reasonable cost (including insurance) of doing so.

## PROPERTY

The Goods shall remain property of OXYGEN until the Client has paid OXYGEN in full, in cash or cleared funds for the Goods and all other goods agreed to be sold by OXYGEN to the Client for which payment is then due and the Client shall hold such Goods, in a fiduciary capacity as OXYGEN's bailee until such payment.

All property belonging to the Client supplied to OXYGEN, must be labelled clearly or otherwise marked for ease of recognition by the client. Whilst every care is taken with the Clients' products or originals it is the Clients' responsibility to maintain insurance in relation to such goods. Any product or material of a highly technical or delicate nature should be under the supervision of an operator or representative of the Client. OXYGEN cannot be held responsible for any inadvertent misuse of or damage to the product or material.

## COPYRIGHT AND TITLE

The copyright, design right and all other intellectual property rights in the Goods, all artwork, copy, promotion and publicity materials and all other work created by or commissioned from OXYGEN will vest in OXYGEN. The Client may use such Goods or other material only directly for the purposes authorised by OXYGEN. The Client may not create or have created copies of the Goods or other materials without OXYGEN's express prior written consent.

The Client shall indemnify OXYGEN against any civil liabilities in respect of 3rd parties claims made against OXYGEN arising out of the infringement of any patent copyright or industrial or intellectual property right or any other liability attributable to any goods, labels, packages or designs supplied and/or approved by the Client.

## SPECIFICATIONS BY THE CLIENT

The Client warrants that it has notified OXYGEN in writing of all facts and circumstances and has provided all the information necessary to enable OXYGEN to carry out work in the preparation, manufacture or modification of the Goods or the supply of the Services in accordance with requirements and specifications of the Client and that the Client will indemnify OXYGEN in respect of all loss, damage or injury of any kind whatsoever by reason of defect in any materials, containers, documents, equipment or specification of the Client or by reason of any failure on the part of the Client to disclose fully to OXYGEN any information or circumstances which might lead to such a claim.

## WARRANTY

OXYGEN warrants that:

All Goods manufactured by it are, at the date of delivery, free of defects in materials and workmanship; and All Services provided by OXYGEN will be performed using reasonable care and skill

In respect of Goods manufactured by OXYGEN, provided that the Client notifies any defects within seven days of delivery OXYGEN will free of charge, at its option:

supply parts for the repair of proven defective Goods; or

replace proven defective Goods; or

repair proven defective Goods at its offices, provided that the Goods shall be returned at the Client's expense; or

repair proven defective Goods at the Client's premises, provided that OXYGEN may charge the Client at OXYGEN's standard rate for on-site delays outside the control of OXYGEN's engineers/designers and for travelling time.

That any artwork produced incorrectly (this does not include changes in specifications or brief by the Client) will be repeated at no extra cost to the Client.

## CLIENT CORRECTIONS

All Client corrections, incorrect copy or a change of brief etc are charged extra unless specified and agreed otherwise.

## PRINTING

Unless otherwise agreed OXYGEN will manage the printing process. Responsibility for final authorisation, which includes proof reading, to print/upload/distribute or similar, any work, remains the responsibility of the Client. Printing will not go ahead without this.

OXYGEN will not be responsible for any printing errors.

OXYGEN will not be responsible for poor reproduction due to low quality origination supplied by the Client.

## WEBSITE CREATION

**Authorisation:** The Client is engaging OXYGEN as an independent contractor for the specific web design project of developing and/or improving a web site, hereinafter referred to as "web design project" which may be installed on the Client's account on an Internet Service Provider (ISP) / Web Presence Provider (WPP) computer, hereinafter refer to as "Hosting Service", if required to perform services. If required to perform services the client hereby authorizes OXYGEN to access this account and authorises the Hosting Service to provide OXYGEN with "full access" to the client's account and any other programs needed for this web design project that are included as part of the client's service agreement/level.

**Copyright and Trademarks:** The Client unconditionally guarantees that any elements of text, graphics, photos, designs, trademarks, or other artwork furnished to OXYGEN for inclusion in the web design project are owned by the client, or that the client has permission from the rightful owner to use each of these elements, and will hold harmless, protect and defend

OXYGEN from any claim or suit arising from the use of such elements furnished by the client.

**Web Site Maintenance:** The Client agrees that after the completion date (see below) the project will be complete. Any maintenance, fixes or other code changes will be charged at current hourly rates or dealt with under any web site maintenance contract between the Client and OXYGEN.

**Completion Date:** At an agreed date the website will be go live on the Hosting Service, and this will be deemed the "completion date". At this date all costs incurred in the creation of the site will become invoiceable. Unless agreed otherwise, the Client will be solely responsible for all hosting service charges. The Client assumes all responsibility for the use and functionality of the web design project.

**Electronic Commerce Laws:** The Client agrees that the Client is solely responsible for complying with such laws, taxes and tariffs, and will hold harmless, protect, and defend OXYGEN and its subcontractors from any claim, suit, penalty, tax or tariff arising from the client's exercise of Internet electronic commerce.

**Web Design Project Copyright:** Original web site content specifically requested by the customer and designed under work for hire shall be the intellectual property of the customer once final payment under this agreement and any additional charges incurred have been paid.

Rights to clipart, photos, graphics, source code, work-up files and computer programs that are not specifically requested and designed under work for hire are not transferred to the Client, and remain the property of their respective owners. OXYGEN retains the right to display graphics and other web design elements as examples of their work in their portfolio.

**Legal Notice:** OXYGEN does not warrant that the functions contained in the web design project will be uninterrupted

or error-free. The entire risk as to the quality and performance of the web design project is with the client. In no event will OXYGEN be liable to the client or any third party for any damages, including, but not limited to service interruptions caused by Acts of God or any other circumstances beyond our control, any lost profits, lost savings or other incidental, consequential or special damages arising out of the operation of or inability to operate this web design project, failure of any service provider, of any telecommunications carrier, of the Internet backbone, of any Internet servers, your or site visitor's computer or Internet software, even if OXYGEN has been advised of the possibility of such damages.

#### USE OF FREELANCE STAFF

The Client acknowledges that OXYGEN may use freelance staff in the discharge of its obligations and hereby agrees that it will not, for a period of 12 months from the completion of any contract with OXYGEN directly or indirectly employ or utilize the services of any freelancer used by OXYGEN in the performance of such contract in the provision of services or the supply of goods similar to or competitive with those supplied by OXYGEN, without the prior written consent of OXYGEN.

#### PROMOTION

OXYGEN is entitled to use any Goods it has created, designed and otherwise been involved in for its own promotional use. This may be on OXYGEN's website, brochures, portfolio and all other promotional material for the purposes of promoting its business. OXYGEN does not accept liability for breach of copyright when using a Client's work for this purpose.

OXYGEN will not be responsible if an authorized press release is not printed. Publication of a press release is entirely the prerogative of the editor of the publication concerned.

#### THIRD PARTY PRODUCTS

The Client accepts that where goods or services are sourced from a 3rd party, its rights in respect thereof will be no greater than those of OXYGEN.

Outsourced works such as mailing and fulfilment will be subject to that organisation's terms and conditions as set out in the estimate.

The Client agrees at all relevant times to comply with any terms and conditions of use relating to the Third Party Products including (but not limited to) software licences and the Client acknowledges that failure to do so could result in the availability of the Third Party Products being denied or revoked by the owner. The Client undertakes to indemnify OXYGEN and to keep OXYGEN fully indemnified against all actions, proceedings, claims, costs, loss, damage or expense whatsoever whether arising in contract or in tort which OXYGEN may suffer as a result of a breach by the Client of any terms and conditions of use relating to Third Party Products.

#### FORCE MAJEURE

Notwithstanding anything contained in the Agreement, in the event of performance of this Agreement by OXYGEN being rendered impossible for any reason beyond its reasonable control (including but not limited to war, invasion, act of foreign enemy, hostilities whether war be declared or not, civil war or strife, rebellion, strikes, lock-outs, or other industrial disputes, Acts of God, acts of governments, or other authorities or defaults of third parties), such non-performance shall be deemed not to constitute a breach of this Agreement.

#### TERMINATION

On termination of this Agreement, all rights and obligations under the Agreement shall cease except those in respect of confidentiality and payment.

#### LAW

These terms and each and every contract made pursuant thereto shall be governed in all respects by and in accordance with the laws of England and the Client hereby submits to the non-exclusive jurisdiction of the English Courts.

Registered office: 18 Newport Street, Tiverton, Devon, EX16 6NL.

Reg. in England and Wales number 4731337.

Registered VAT no: 810 9078 41

# Oxygen Creative

## Website hosting – terms and conditions

### Account setup and contact

- "Oxygen Creative" will setup your account after we have received payments that are agreed upon in the invoice.
- It is your responsibility to provide us with an email address which is not at the domain you are signed under.
- If there is ever an abuse issue or we need to contact you, the primary email address on file will be used for this purpose.
- It is your responsibility to ensure the email address on file is current or up to date at all times.
- Providing false contact information of any kind may result in the termination of your account.

### Content

- All services provided by "Oxygen Creative" may only be used for lawful purposes.
- The customer agrees to exclude and hold harmless "Oxygen Creative" from any claims resulting from the use of our services.
- Use of our services to infringe upon any copyright or trademark is prohibited. This includes but is not limited to unauthorized copying of music, books, photographs, or any other copyrighted work.
- The offer of sale of any counterfeit merchandise of a trademark holder will result in the immediate termination of your account. If you believe that your copyright or trademark is being infringed upon, please email [talk2us\[at\]oxygencreative\[dot\]co.uk](mailto:talk2us[at]oxygencreative[dot]co.uk) with the information required.
- "Oxygen Creative" reserve the right to refuse service to anyone. Any material that, in our judgment, is obscene or threatening is prohibited and will be removed from our servers with or without notice.
- Failure to respond to email from our abuse department within 48 hours may result in the suspension or termination of your services.
- All abuse issues must be dealt with via email and will have a response within 48 hours.
- If in doubt regarding the acceptability of your site or service, please contact us at [talk2us\[at\]oxygencreative\[dot\]co.uk](mailto:talk2us[at]oxygencreative[dot]co.uk) and we will be happy to assist you.
- Potential harm to minors is strictly forbidden, including but not limited to child pornography or content perceived to be child pornography.
- Any site found to host child pornography or linking to child pornography will be suspended immediately without notice.
- We will suspend the site in question and will notify you so you may rectify the issues outlined in the email you will receive. We will further monitor your activity; more than one infraction of any type may result in the immediate termination of your account.
- Violations will be reported to the appropriate law enforcement agency.
- It is your responsibility to ensure that scripts/programs installed under your account are secure and permissions of directories are set properly, regardless of installation method.
- Rectification of any spam, virus, worm, Trojan or other infected files / server issues deemed to have been caused by improper or insecure files or code placed on the server will be charged at the Oxygen standard hourly rate.

**Examples of unacceptable material include:** IRC Bots, Proxy Scripts / Anonymizers, Pirated Software / Warez, ".img" / image hosting only sites that do not host an actual domain name, Escrow, High-Yield Interest Programs(HYIP) or related sites, Investment sites (FOREX, egold exchange), AutoSurf sites, Bank Debentures, Bank Debenture Trading Programs, Prime Banks Programs, lottery sites, muds / rpgs, hate sites, hacker focused sites/archives/programs, or sites promoting illegal activities, IP Scanners, Brute Force Programs, Mail Bombers and Spam Scripts.

### Zero tolerance spam policy

- We take a zero tolerance stance against sending of unsolicited e-mail, bulk emailing, and spam. 'Safe lists' and 'double opt-in' will be treated as spam. Any user who sends out spam will have their account terminated with or without notice.
- Sites advertised via SPAM (Spamvertised) may not be hosted on our servers. This provision includes, but is not limited to SPAM sent via fax, email, instant messaging, or usenet/newsgroups.
- Any account which results in our IP space being blacklisted will be immediately suspended and/or terminated.
- "Oxygen Creative" reserves the right to require changes or disable as necessary any web site, account, database, or other component that does not comply with its established policies, or to make any such modifications in an emergency at its sole discretion.
- "Oxygen Creative" reserves the right to charge the holder of the account used to send any unsolicited e-mail a clean up fee. This cost of the clean up fee is entirely at the discretion of "Oxygen Creative".

### **Payment information**

- You agree to supply appropriate payment for the services received from "Oxygen Creative", in advance of the time period during which such services are provided.
- You agree that until and unless you notify "Oxygen Creative" of your desire to cancel any or all services received, those services will be included in your monthly bill.
- You will remain liable for all fees during any period (annually) when services have been discontinued or suspended due to a failure on your part to comply with these terms and conditions.
- Once we receive your request for cancellation and have confirmed all necessary information with you via email, we will inform you that your account has been cancelled. At this time, your account with us has been cancelled. If you do not hear back from us or receive an e-mail confirming this cancellation, please contact us immediately.
- Once you choose the option to remove your website from our server we will store your data for a period of 2 weeks before deleting it completely from our database unless you wish for immediate removal.
- As a client of "Oxygen Creative", it is your responsibility to ensure that your payment information is up to date, and that all invoices are paid on time. "Oxygen Creative" provides a 28 day grace period from the time the invoice is due and when it must be paid. Any invoice that is overdue for 28 days and not paid will result in a 10% of monthly bill late fee and an account suspension until account balance has been paid in full.
- "Oxygen Creative" reserve the right to change the annual costs at any time, if this is to happen we will give you plenty of notice before changes to costs become official.
- "Oxygen Creative" reserve the right to change prices estimated and the right to increase the amount of resources given to plans at any time.

### **Backups and data loss**

- Your use of "Oxygen Creative" services is at your sole risk.
- "Oxygen Creative" is not held accountable if contents of your website and/or services are lost out of our control. All contents and details of any website on our server will be backed up weekly in case of uncontrollable events (e.g. power failure/surge).
- Oxygen Creative is not responsible for Client's files residing on Oxygen Creative's servers. These files include, but are not limited to, all website files, email, calendars, contacts and database files. You are solely responsible for independent backup of data stored on our servers. There are multiple ways you are able to access and backup your data. If you need additional information on these options please contact us at [talk2us@oxygencreative.co.uk](mailto:talk2us@oxygencreative.co.uk). Oxygen Creative performs regular backups on a daily basis for emergency purposes, but we cannot be held responsible for any lost data files, email or other.
- Backups and support can be arranged by way of a separate support and maintenance agreement. Please contact Oxygen Creative to discuss options.

### **Cancellations and refunds**

- "Oxygen Creative" reserves the right to cancel the account at any time with or without notice.
- Any abuse of our staff in any medium or format will result in the suspension or termination of your services.
- Customers may cancel at any time.
- If you are not completely satisfied with our hosting services within the first 30 days of your service, you will be given a full refund of the contract amount.
- "Oxygen Creative" gives you an unconditional 30 day money back guarantee; refund requests after 30 days will be refunded on a prorated basis of any unused time.
- Only first-time accounts are eligible for a refund. For example, if you've had an account with us before, cancelled and signed up again, you will not be eligible for a refund or if you have opened a second account with us.
- Domain name purchase is non-refundable.
- Violations of the Terms and Conditions will waive the refund policy.

### **Resource usage**

User may not:

- Run stand-alone, unattended server-side processes at any point in time on the server. This includes any and all daemons, such as IRCd.
- Run any software that interfaces with an IRC (Internet Relay Chat) network.
- Run any bit torrent application, tracker, or client. Please note that you may link to torrents off server, but may not host or store them.
- Participate in any file-sharing/peer-to-peer activities.
- Run any gaming servers such as counter-strike, half-life, battlefield1942, etc.
- When using PHP include functions for including a local file, include the local file rather than the URL. Instead of include ("http://yourdomain.com/include.php") use include ("include.php").

### **Bandwidth usage**

- You are allocated a monthly bandwidth allowance. This allowance varies depending on the hosting package you purchase.
- Should your account pass the allocated amount we reserve the right to suspend the account until the start of the next allocation, suspend the account until more bandwidth is purchased at an additional fee, suspend the account until you upgrade to a higher level of package, terminate the account and/or charge you an additional fee for the overages.
- Unused transfer in one month cannot be carried over to the next month.

### **Disclaimer**

- "Oxygen Creative" shall not be responsible for any damages your business may suffer.
- "Oxygen Creative" makes no warranties of any kind, expressed or implied for services we provide.
- "Oxygen Creative" disclaims any warranty or merchantability or fitness for a particular purpose. This includes loss of data resulting from delays, no deliveries, wrong delivery, and any and all service interruptions caused by "Oxygen Creative" and its employees.

### **Disclosure to law enforcement**

- "Oxygen Creative" may disclose any subscriber information to law enforcement agencies without further consent or notification to the subscriber upon lawful request from such agencies.
- We will cooperate fully with law enforcement agencies.

### **Changes to the Terms and Conditions**

- "Oxygen Creative" reserves the right to revise its policies at any time without notice.