



**Rubber**Duckiee

# Terms of Business

The purpose of this document is to clarify the nature of the services and deliverables that Rubber Duckiee Limited (Rubber Duckiee) will deliver to the Client.

These Terms, together with any terms set out in the Proposal, constitute the entire agreement between Rubber Duckiee and the Client and supersede any previous agreement.

These Terms may not be varied except in writing and signed by both parties. All other terms and conditions express or implied by statute or otherwise are excluded to the fullest extent permitted by law.

This Agreement is subject to English law and any court action must be brought in the English courts. In addition, both parties have the right to refer certain disputes to arbitration, as long as both parties agree on the choice of arbitrator.

These are the Terms of Business that will apply to the work we do for you and should be read in conjunction with the proposal and any subsequent contract letters. These Terms of Business commence the day you - the client - engages Rubber Duckiee to provide work / services to them and serves as a Contract between us.

If, at any time, you have any question in connection with the Contract or our work, please let us know immediately.

## **Definitions**

"Rubber Duckiee" means Rubber Duckiee Ltd. (Registered in England number: 06642468) whose registered office is at 124 Finchley Road, London, England, NW3 5JS.

"Client" means the client to whom the proposal is addressed, for whom Rubber Duckiee has agreed to provide the Service.

"Service" means the service provided by Rubber Duckiee or its agents for the Client and referred to in the Proposal.

"Proposal" means the letter or proposal document addressed to the Client to which these Terms are attached.

"Fees" means the hourly rate for account handlers or the agreed fees shown in the Proposal.

## General

### Duration

This Contract may be terminated by either party on written notice with immediate effect if the other commits a material breach of any term of this Contract which is not remedied within 30 days of a written request to remedy the same.

This Contract can be brought to an end by either Rubber Duckiee or the Client giving three calendar months' written notice to the other.

### Supply of Service

Rubber Duckiee will make all reasonable efforts to provide the Service in accordance with the Proposal and using reasonable care and skill.

Rubber Duckiee and the Client must agree to any changes or additions to the Service or these Terms in writing.

Where a Timetable is referred to or set out in the Proposal, we will use reasonable efforts to carry out our obligations in accordance with the timetable, recognising that our actions are dependent on both the client and their consultants. Unless both of us specifically agree otherwise in writing, dates contained in the timetable are intended for planning and estimating purposes and are not contractually binding except where they relate to payment schedules and terms.

Each of us will name a contact who will be responsible for managing all issues relating to the performance of the Contract.

The Client shall supply Rubber Duckiee with all necessary documents and other relevant materials or information within sufficient time to enable Rubber Duckiee to provide the Service. The Client shall ensure the accuracy of all documents, materials or information supplied.

### Fees

Fees shall be agreed by Rubber Duckiee and the Client before the commencement of the Service for the Client.

Fees shall be stated exclusive of any taxes, such as VAT.

Rubber Duckiee shall be entitled to vary the Fees from time to time by giving reasonable written notice to the Client.

If the Fees are fixed per calendar month, Rubber Duckiee shall be entitled to invoice the Client one calendar month in advance of the Service being provided.

Rubber Duckiee charges out-of-pocket expenses at cost to cover reasonable expenses, where reasonable is defined as having the agreement of both parties.

In addition, if Rubber Duckiee is required to pay for any third party items on behalf of the Client (e.g. print, photography, etc.), a 12.5% handling fee will be added to the net cost of the item and invoiced accordingly. However, if the Client is willing to instruct the third party directly, these handling charges will be avoided.

The Client shall pay the Fees (inclusive of VAT) and any additional sums owing within 30 days of the date of Rubber Duckiee's invoice. Queries on invoices must be raised within 14 days of the date of the invoice, otherwise the Client will be deemed to have agreed the sums due.

- If payment is not made on the due date, Rubber Duckiee shall be entitled, without limiting any other rights it may have, to:
- Charge interest on the outstanding amount (both before and after any judgement) at the rate of 8% above the annual base rate of the Bank of England at the time the invoice becomes due from the due date until the outstanding amount is paid in full.
- Suspend work on all projects in which the Client has retained Rubber Duckiee until the debt is discharged.
- Rubber Duckiee will be entitled to keep possession of all documents and other materials of the Client until the debt due in respect of the Service is discharged.

## **Confidentiality and Copyright**

Any documents, materials or information provided by the Client which is designated confidential by the Client will be kept confidential by Rubber Duckiee and its agents. Rubber Duckiee and its agents will only use or disclose it as may be required in undertaking the Service. Similarly, any documents, materials or information provided by Rubber Duckiee which is designated confidential by Rubber Duckiee must be kept confidential by the Client. This clause does not apply to any documents, materials or information that are public knowledge at the time when they are provided or become public knowledge through no fault of either party.

The property and any copyright or other intellectual property rights in any documents, material, source code or information provided by Rubber Duckiee shall belong to Rubber Duckiee subject only to the Client's right to use the documents, material or information for the purpose stated in the Proposal.

- The Client warrants that any documents, materials or information provided to Rubber Duckiee will not infringe the copyright or other rights of any other party.
- The Client shall indemnify Rubber Duckiee against any loss, damages, costs, expenses or other claims arising from any such infringement.
- Without prejudice to the first point in this section, we may cite the performance of the Services to our clients and prospective clients as an indication of our experience, unless we specifically agree otherwise in writing.

## **Our Liabilities**

Rubber Duckiee will not be liable for loss of profits or revenue, lost business or missed opportunities, wasted expenditure or savings the Client might have made. There may be occasions when Rubber Duckiee is unable to provide the Service because of matters outside its reasonable control. Rubber Duckiee will not be liable to the Client if that is the case.

Without prejudice to any other provisions in these Terms, the entire liability of Rubber Duckiee shall not exceed the amount of Rubber Duckiee's charges for the provision of the Service except as expressly provided in these Terms.

## **Staff**

We reserve the right to employ agents and subcontractors to assist us when providing any part of the Service. Any reference to our employees in the Contract includes agents and sub-contractor staff. We will remain liable to you in respect of any Services provided, subject to the other provisions of the Contract.

Neither of us will, during the period of this Contract or within 6 months of its termination or expiry, solicit directly or indirectly any employees, agents or subcontractors of the other who have been involved in providing or receiving Services or otherwise connected with this Contract, except those employees who have been involved on a purely administrative Basis.

## Client responsibilities

In addition to the above, in order for Rubber Duckiee to deliver the services and deliverables the client shall be responsible for:

- 1 Provision of project management within the client's company for the duration of the project.
- 2 Provision of sufficient resources for the testing of deliverables.
- 3 Management of any 3rd party services and/or services required but not contracted through Rubber Duckiee. Specifically, any plugins added to a website by the client will be the responsibility of the client.
- 4 User acceptance testing (UAT) on the UAT environment.
- 5 Creation and provision of content to upload to the content management system. (Rubber Duckiee will be responsible for uploading the content to WordPress).
- 6 Covering any out of pocket expenses incurred by Rubber Duckiee, these will be agreed prior to being incurred.

## Sign off

The client is responsible for signing off the website in advance of launch, without written sign off Rubber Duckiee will not launch.

For 30 days following website launch Rubber Duckiee will make all reasonable requests for amends, once this period has passed amends will be subject to an additional fee.

## Rubber Duckiee's responsibilities: website specific

### Warranty

Any specially created functional code provided under this statement of work shall be warranted by Rubber Duckiee to function as it did when it was accepted on Rubber Duckiee's servers for a period of 30 days from the date of acceptance or first use in a live environment.

The warranty is immediately void if any changes are made to the underlying code of the system or changes are made to the hosting environment by any party other than Rubber Duckiee unless specifically approved by Rubber Duckiee.

### Software

Rubber Duckiee will install and configure WordPress as the content management system (CMS) as per the agreed specification.

### Specific Scope Exclusions

- 1 Preparation or application of user acceptance test scripts
- 2 Execution of any performance or load testing.
- 3 Content production or image sourcing, unless otherwise agreed.
- 4 Performance of any security or penetration testing.



Rubber Duckiee Limited

0800 612 6614

[rubberduckiee.com](http://rubberduckiee.com)