



Terms and Conditions

Standard Website Terms

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Terms and Conditions

Websites and related services

The following are the Standard Terms and Conditions on which ESME Creative provide its Services. Alongside the quotation or other statements of work, they form the entire contact between the 'Client' and the 'Consultant' (Tracey Wond t/a ESME Creative).

Alternative Terms and Conditions are often issued for projects and these will be provided to you and will prevail over these standard Terms and Conditions.

1 Interpretation

In these Terms and Conditions:

- 'Business Day' refers to a day (other than a Saturday, Sunday or public holiday) when banks in London are open for business.
- 'ESME Creative' means the name in which Tracey Wond (sole trader) (and Associates or Employees acting on her behalf) trades as and is also referred to as 'Consultant';
- 'Letter' means the Letter of Engagement;
- 'Loss or damage' is used to refer to any losses or damages suffered or incurred, directly or indirectly, to either party under or in connection with the Contract;
- 'Parties' means the parties to this Contract, i.e., ESME Creative and the Client.
- 'Services' means the services to be provided by ESME Creative under the Contract and as described in the Statement of Work.

2 Acceptance

- 2.1 The Contract commences upon the day that a signed contract is provided, or as otherwise signalled in writing (including email acceptance), or on the date that payment of the upon-commission payment is made (whichever is earlier). As such, it is not necessary for the Client to have signed an acceptance of these terms and conditions for them to apply - payment of the first, upon-commission payment is deemed to be an alternative acceptance of these terms and conditions in full.
- 2.2 There shall be no contract between ESME Creative and the Client until either the contract is signed, or payment is made as 2.1.

3 Basis of Contract/Whole Agreement

- 3.1 Each party acknowledges that the Contract represents the whole agreement between the Parties, and it has not relied upon any oral or written representation by the other party and that it has made its own independent investigation into all matters relevant to the Contract.
- 3.2 Any examples, samples or advertising in the Consultant's marketing are issued for the sole purpose of giving approximate idea of the Services available. They shall not form part of the Contract or have contractual force.
- 3.3 **Variation:** Any variation of the Contract will only become binding if it has been agreed in

writing by both Parties.

- 3.4 **Continuance:** These Terms and Conditions shall apply to further work conducted by ESME Creative at the written request of the Client, in connection with the Services, and with or without an additional or amended Statement of Work.

4 Supply of Services

- 4.1 The Consultant shall supply the Services to the Client in accordance with the Statement of Work in all material respects.
- 4.2 The Consultant shall work carefully and professionally with reasonable skill and care and in accordance with the Statement of Work.
- 4.3 The Consultant accepts no liability for services and gives no warranty or guarantee as to the quality or suitability of services provided by third parties, whether or not provided through the Consultant or directly to the Client, including but not limited to the hosting of the Client's website or Wix plan, domain name provision, apps/plugins, SSL certificate provision, and third-party payment gateways.
- 4.4 Due to the continuous changes in technology, the Consultant does not guarantee future and continuing performance of the Deliverables on any particular systems, devices or browsers.
- 4.5 The Consultant accepts no liability for on-going performance or quality and gives no warranty or guarantee in this regard.
- 4.6 ESME Creative make every effort to ensure websites are designed to be viewed by the majority of visitors. However, the client understands that the Consultant cannot guarantee correct functionality with all browser software across different operating systems.
- 4.7 Unless otherwise set out in the Statement of Work, the Consultant does not accept liability or responsibility for on-going support and maintenance of Deliverables including but not limited to: creating backups of site content or databases; hosting, domain and plan costs; updating your website; updating apps, extensions or plugins; form-testing; secure and safe practice by your site administrators; ensuring all site functionality works as you intended including payment receipts and booking confirmations; communicating with any third parties where issues arise.

5 Obligations of the Client

- 5.1 To ensure the Contract and terms enclosed are accurate and are considered acceptable within the Client's organization and between necessary decision-makers prior to their acceptance.
- 5.2 To cooperate with the Consultant in all matters relating to the provision of services.
- 5.3 To provide necessary copy and other materials required by the Consultant in good time.
- 5.4 To carry out a 'soft-launch' of the deliverables prior to announcing the deliverable to the Client's publics, to enable any defects to be remedied in advance.
- 5.5 To pay fees due in line with specific payment terms.
- 5.6 To identify ESME Creative as the creator wherever appropriate.
- 5.7 Grants ESME Creative the right to refer to the Client as one of its clients in its marketing and promotional activity.
- 5.8 Permits ESME Creative to add a design credit text or graphic in the footer of their website which denotes themselves as the website designer. Removal can be agreed but may be subject to charge.
- 5.9 To acquire any licenses required to enable the proper and legal use of any licensed fonts requested by the Client.

5.10 The Consultant shall, without limiting its other rights or remedies, have the right to suspend or delay performance of the Services until the Client remedies delays or failings in any of their obligations (client default). The Consultant reserves the right to close the project and invoice for the remaining project fee outstanding in this event.

6 Confidentiality

- 6.1 Each party agrees to work carefully and considerately in respect of data (including client data), quotations, processes and specifications that may harm one or the other, this includes data that could be used competitively by others (e.g., trade secrets).
- 6.2 Protocol for sending sensitive data should be agreed by both parties.

7 Limitation of liability

- 7.1 ESME Creative shall not be liable to the Client for any Loss or Damage incurred in the performance of their Services unless caused by ESME Creative's gross negligence, wilful misconduct or breach of the Contract.
- 7.2 Liability for work performed shall not exceed the amount of ESME Creative's fee paid by the Client for the project.
- 7.3 In the case of new websites: ESME Creative cannot accept responsibility or liability for alterations caused by other parties including by the Client which impact the use or usability of the Deliverables beyond completion (or for existing websites whilst the project is in progress). Support to rectify may be available but is chargeable.
- 7.4 ESME Creative accepts no liability for loss or damage caused by the use of electronic communications devices (including electronic messages) whatsoever.
- 7.5 **Liability for delay:** The Consultant shall endeavour to meet deadlines and milestones agreed in advance and will ensure reasonable promptness. ESME Creative shall not be liable for delays created by the Client (for instance, late content or copy being sent to ESME Creative).

8 Fees and Taxes

- 8.1 Fees are outlined in the Quotation sent by the Consultant to Client. Quotations are valid for 30 days.
- 8.2 Payment can be made via bank transfer, PayPal or debit/credit card but the Consultant reserve the right to make available alternative methods or decline these methods for whatever reason.
- 8.3 Fees should be made within the timescales agreed.
- 8.4 **Late Payment:** ESME Creative reserve the right to charge statutory interest in line with late payment protocol at the annual statutory interest rate at the time the payment first becomes overdue (currently 8% plus the Bank of England base rate for business to business transactions). This will be added as daily interest and will be issued as an Invoice. In addition, we reserve the right to cancel any domains and plans we have purchased on the Client's behalf, or withhold work due to late or non-payment (this does not void the outstanding balance to the Client and could result in service interruptions for which we shall not be responsible for putting right or that may be subject to a charge to restore).
- 8.5 Each Party shall be responsible for its own tax liabilities arising in connection with the provisions of the Contract.

9 Plan costs and domain names

- 9.1 ESME Creative may purchase and renew domain names and Wix Plans on behalf of the Client where set out in the Statement of Work or agreed in writing elsewhere. This is chargeable at cost including VAT, plus 10% to cover administrative cost. Late payment protocols (as set out under 8: Fees and Taxes) are applicable. Unless outlined in the Statement of Work or later agreements, the renewal and resultant costs of renewing are the responsibility of the Client. We reserve the right to pass on charges relating to these renewals and any resultant costs that we incur when relating to your website.
- 9.2 No liability or responsibility is held by the Consultant for the loss or cancellation of a domain, plan or website features brought about by non or late payment or other default by the client.

10 Termination

- 10.1 The Contract may be terminated by either Party by giving 15 days written notice to the other Party.
- 10.2 Without limiting its other rights or remedies, the Consultant may terminate the contract with immediate effect by giving written notice to the Client if the Client is reasonably believed, in the opinion of the Consultant, to be unable to fulfil its obligations under the Contract including their ability to settle their fees for supply of services. Or, if the Client commits a material breach of any term within the Contract.
- 10.3 On termination of the Contract for any reason, ESME Creative will invoice for progress and liabilities upto the date of first written notice, with payment falling due immediately. No deliverables upto that point shall be handed over to the Client until payment is received and has cleared.
- 10.4 The Client shall return and not use any deliverables until they have been fully paid for.
- 10.5 Intellectual property will remain with the Consultant until payment is made in full.

11 Conflict of Interest

- 11.1 ESME Creative work with a diverse range of organisations and entities whose interests may conflict with that of our Client. Nothing in the Contract shall prevent ESME Creative from providing services to other clients/future clients. ESME Creative shall ensure utmost confidentiality and independence in this respect.

12 Contractor Status

- 12.1 ESME Creative's relationship with the Client shall remain that of an independent contractor and not an employee.

13 Force majeure/Unavoidable Impacts

- 13.1 A party will not be liable for any failure of or delay in the performance of this agreement for the period that such failure or delay is beyond the reasonable control of a party, materially affects the performance of any of its obligations under this agreement, and could not reasonably have been foreseen or provided against, but will not be excused for failure or delay resulting from only general economic conditions or other general market effects. ESME Creative may elect to terminate or vary the Contract but reserves the right to charge the Client for progress and liabilities upto the date of first written notice.

14 Standard Media Delivery

- 14.1 All files and copy will be exchanged in electronic format. From time-to-time this may require

use of third-party applications to aid efficient transfer. Payment to subscribe to or access particular applications that a Client insists are used will be chargeable to the client (plus 10% administration fee on that cost).

15 Notices

- 15.1 Notices sent by either Party must be given in writing and may be delivered personally, electronically or by letter to the other Party at its registered address. Notice given by letter will be deemed to have been given at the time at which the letter would be delivered in the ordinary course of post, on the date of a personal delivery, or at the date of receipt if transmitted electronically using a near-instant service.