



mudbath  
**DIGITAL** / NEWCASTLE

# Terms of Business

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## Terms & Conditions

Please read through our Terms and Conditions. If you are using or have used our service it is understood that you have agreed to the terms set forth on this page. When we say “We” “Mudbath & Co” “Mudbath & Co”, “Mudbath Digital”, “TWS”, “US” and “our service” we are referring to Mudbath & Co Pty Ltd and its respective products and services. References to “you” “your” “customer” “client” and the like, refer to you, and your agents. These Terms and Conditions can change at any time. It is important that you check back here regularly. Your continued use of this website implies acceptance of any subsequent revisions.

Mudbath Digital’s liability is limited to the amount paid by the customer to Mudbath Digital for work undertaken.

## Payment

Payment for our Projects is made over three stages, unless otherwise agreed.

Stage One: Prior to commencing work we must receive a 40% deposit for your project.

Stage Two: Upon UAT (user acceptance testing) Development – a further 40% of the project is due.

Stage Three: On completion and approval of the project on a UAT environment by you, the final 20% project milestone is due to deploy and launch the site. If content loading takes longer than 30 days post the UAT milestone, the final site milestone will be billed and due as per the terms on the invoice.

## Refund Policy

Refund Policy on projects to be paid in total before commencement

### **Prior to work commencing**

You will be eligible for a complete refund of your project value if no work has commenced on your project from when we receive payment of your deposit, to when we receive notice in writing that you are cancelling your website project and request a refund.

### **Once work has commenced**

Once we have commenced work on your project a partial refund may be available to you. Any request for a refund, or partial refund, must be made in writing. Your refund will be calculated by deducting costs associated with work undertaken by Mudbath Digital (charged at our current hourly rate) and/or expenses incurred by Mudbath Digital relating to your project up to the date of cancellation. We will provide you with a ledger of work completed, and/or expenses incurred, to justify the refund (if applicable) you will be paid.

Work undertaken on your project may include, but is not limited to; contact between yourself and an Account Manager, Producer and/or website designer from Mudbath Digital including any meetings, the commencement of wireframes/prototypes by Mudbath Digital for your project, the development of a design concept(s) by Mudbath Digital for your project, the sourcing of imagery for your project, time spent on strategy for your website, internal discussions by our staff relating to your project, the allocation of future staffing resources in response to your project sign-off and any time spent building and/or coding your website. Expenses incurred may include the purchase of stock imagery, the purchase of third party technology products and/or services for your project as well as other, reasonably incurred expenses in building, or preparing to build, your website.

### **Refund Policy on Projects with a staged payment structure**

## Prior to work commencing

You will be eligible for a complete refund of your 40% deposit if no work has commenced on your project from when we receive payment of your deposit, to when we receive notice in writing that you are cancelling your project and request a refund.

## Once work has commenced

Once we have commenced work on your project no refund is available on the 40% deposit paid for your project. Work may include, but is not limited to; contact between yourself and an Account Manager, Producer and/or website designer from Mudbath Digital, the commencement of wireframes/prototypes by Mudbath Digital for your project, the commencement of design concepts by Mudbath Digital for your project and other work undertaken by Mudbath Digital in relation to your project.

## Retainer Agreements & Post Paid Projects

### Requirements Definition Document

For all post-paid & retainer agreement work a Requirement Definition Document (RDD) is prepared. This document stipulates the specifications and requirements Mudbath & Co will deliver for that particular project. Both parties must agree to this document. If variations in the project are required this addition or alteration to scope must be versioned and updated in the initial RDD or alternatively have a record of evidence that both parties acknowledge the variation and the updated outcomes. The RDD is the binding scope and deliverable contract between Mudbath & Co and the client. This document must be signed before production commences.

### Refunds

If a project has not started in any form, a full refund on the project is available to the client.

## RDD

If after the creation of a RDD it is decided a project should no longer commence, a complete refund of the project is available to the client except for the time allocated to the creation of the RDD.

## Over Allocation

In the event it is realised that an allocated post-paid budget to a project is higher than a realised allocation through the process of creating an RDD document, the difference will be considered a retainer amount that the client can request to be refunded or re-allocated post the completion of the initial project.

## The images associated with a Project

If we use stock imagery on your website you do not own these images, ownership is retained by the image rights owner. Such images can therefore not be used or re-used for any other purpose and can only be used as they were placed onto your website by us. Any editing of the dimensions in which they appear may contravene their usage rights. Do not copy the images and use them in other promotional materials. If you are looking to own the images on your website or use them for another purpose then please contact us and we will endeavour to put you in contact with the image rights owner. This of course, does not apply to images that you own and provide to us for use on your website.

## Links

As part of your website build and ongoing hosting Mudbath Digital has the right to include back-links from your website to the Mudbath Digital website. This is an important marketing avenue for us and is factored into your website cost. If you do not want the back-link on your website we may be able to negotiate a fee for the removal of the links.



## Promotional material

Mudbath Digital reserves the right to use client websites, web designs, layouts, prototypes, wireframes and collateral in advertising and/ or marketing initiatives. This may include portfolio examples on our website, case studies and other promotional initiatives.

## Support

Mudbath Digital provides a telephone helpdesk, an email support service at [support@mudbath.com.au](mailto:support@mudbath.com.au), and a Live Chat service 7 days 9am - 7pm (AEST). Any support outside of a project Requirements Definition Document will be billed at our standard rate.

## Non Payment

If any invoices become overdue by more than 30 days we reserve the right to put any of the services on hold you may have with us. This includes web hosting & marketing campaigns.

If any invoices become overdue by more than 90 days we will send your account to a debt collection agency. You will then be liable for any fees incurred in the recouping of the fees charged by the agency.

## Project launch

We make every effort to launch your project onto your domain name on the date you requested when we agreed to build your website, but we do not offer a guarantee. If we are not able to launch on the day requested we will inform you prior to the date and arrange an alternative launch date.

## Your privacy

Your privacy is important to us. We dislike spam as well. We will never sell, lease or distribute your contact details to any third party. We will only reveal data pertaining to your account if compelled to do so by law.

## Fair use policy

We employ a fair use policy to our websites. If we believe, for any reason, that you are not behaving in a manner expected of a Mudbath Digital customer then we reserve the right to terminate your account - effective immediately.

## Accessibility

We make efforts to ensure that our website, our hosting farm and all of our services are online 24x7 every day of the year. However, this will not always be the case. There are times when our website will be down, sometimes for things that we can't control and others that we can. When our service is offline we will do our best to get it online as soon as possible. We will not be held responsible for damage, events or losses directly or indirectly related to our website being offline. If you have specific hosting needs, or expect a large volume of users to visit your website in a short space of time, e.g. viral marketing campaigns, mass media exposure etc then please advise us of this well in advance.

## Service Level Agreement

We endeavour to provide at least 99.9% uptime on all of our hosting. For more information on our Service Level Agreement, please contact us.

### Hosting

Your website must be hosted on our servers during UAT development.

## Liability

We will not be held liable for any action or inaction relating to our service. We offer a quality service at highly competitive rates. We believe that our system is highly secure from the actions of hackers, viruses and other problems on the internet but can make no guarantees. It is up to you to back-up and ensure the integrity of your data offline. If your website is offline then please contact us and we will try to fix the problem as soon as



possible. We will not be liable for loss of sales, leads or reputation from using our service.

## Disclaimer of warranties

Mudbath Digital offers a 30 day warranty from project launch to address any Quality Assurance (QA) and support items, as required.

## Severability

If a clause or part of a clause is read in a way that makes it illegal, unenforceable or invalid, but can also be read in a way that makes it legal, enforceable and valid, it must be read in the latter way. If any clause or part of a clause is illegal, unenforceable or invalid, that clause or part thereof is to be treated as removed from this document, but the rest of this document is not affected.

## Dispute resolution

The parties will, in good faith, attempt to resolve any dispute, claim or controversy arising out of or relating to this agreement by negotiation. Either party may initiate negotiations by providing written notice in letter-form to the other party, setting forth the subject of the dispute and the relief requested. The recipient of such notice will respond in writing within five days with a statement of its position on, and recommended solution to, the dispute. If the dispute is not resolved by this exchange of correspondence, then representatives of each party with full settlement authority will meet at a mutually agreeable time and place within ten days of the date of the initial notice in order to exchange relevant information and perspectives, and attempt to resolve the dispute. If the dispute is not resolved by these negotiations, the matter shall be submitted to mediation in accordance with, and subject to, The Institute of Arbitrators & Mediators Australia Mediation and Conciliation Rules.

If the dispute or difference is not settled within 30 days of the submission to mediation and provided such period is not extended by consent of the parties, it shall be and is hereby submitted to arbitration in accordance



with, and subject to, The Institute of Arbitrators & Mediators Australia Rules for the Conduct of Commercial Arbitration.

Notwithstanding the existence of a dispute or difference each party shall continue to perform the Agreement.

This clause shall survive termination of this Agreement.

## Jurisdiction

This website is governed by the laws of the state of New South Wales, Australia. Any dispute arising from the use of this website will be settled in this jurisdiction.