

# Terms of Service | UpBound Pty Ltd

By purchasing an UpBound Product or Service, you confirm that you (the client) agree to adhere by the terms and conditions of these terms of service. These terms of service are legally binding and represent an agreement between you (the client) and UpBound Pty Ltd (the provider/"UpBound").

## WEBSITES

1. UpBound designs, builds, and hosts websites and provides online and telephone support.
2. The client has the right to, title, and interest in a website containing intellectual property owned by the client together with, but not limited to textual content, video and/or audio.
3. The client wants UpBound to host its website and understands that UpBound websites must be hosted on UpBound's preferred servers.
4. UpBound websites are all built within the Squarespace platform, unless circumstances dictate another platform is more suitable. The client can, at any stage, request access to the Squarespace Content Management System (CMS) however UpBound takes no responsibility for any issues that are caused, changes that are made or any similar problems arising from the client's use of the CMS. If the client deletes, corrupts or otherwise alters the website through the CMS and requires UpBound to correct same, UpBound reserves the right to charge a fee for doing so. The client also acknowledges that any changes they make may have far reaching implications for their website that are in no way the responsibility of UpBound. This also applies to third parties (i.e. SEO service providers) being given access to the Squarespace CMS by the client. UpBound does not provide login details to anyone but the client; it is the client's responsibility to judge for themselves who is suitable to be given access. The client also assumes responsibility if a third party deletes, corrupts or otherwise alters the website through the CMS, and the aforementioned chargeable fees apply. The unlimited support as outlined in the Ongoing Website Service Agreement does not include the returning of a website to the state in which it was declared 'complete' in the event that the client has made a vast amount of changes they cannot correct themselves. UpBound is happy to assist the client in these circumstances at an hourly rate.
5. UpBound licenses the use of the Squarespace CMS software and design templates for the duration of the contract.
6. Ownership of the intellectual property of the website design is not transferred to the client as part of the purchase of the website. This includes any and all working files, custom code and similar assets created by UpBound for the purpose of the website build.
7. This agreement shall take full force and effect as and from the date of the client's payment of the 50% deposit which signals their consent to being the website build.
8. UpBound shall supply to the client all services necessary to effectively host the clients' website and make available for a fee to the client the services of UpBound to provide to the client online support, telephone support for the ongoing administration and maintenance of the clients website hosted by UpBound in circumstances where the client requests such support. In the event that the client wishes to forgo any ongoing service agreements and completely manage the website for themselves, UpBound will make available all login details & undertake necessary hand-over arrangements (such as updating credit card details for ongoing billing) to facilitate this, however the client pursues this direction knowing that any support UpBound provides the client thereafter will incur additional fees.
9. This Agreement may change from time to time. In the event that this Agreement changes, UpBound shall advise the client in writing at least 60 days before the changes shall take effect. If the client asserts that any changes to this Agreement show unfair bias against the interests of the client in favour of UpBound, the client agrees to dispute the application of the changes in writing prior to the changes taking effect. In the event of a dispute the client will either be provided with a written exemption from the specific changes within this Agreement that the client asserts to be unfair, or if this is not possible the client may at its option terminate this Agreement by giving 30 days' notice to UpBound whereupon UpBound shall charge for services rendered up to the date of termination of this Agreement which is to be paid in full by the client on or before the date of the termination of this Agreement.
10. UpBound have an Fair Use policy, and the client upon executing this Agreement is deemed to have read and understood the Fair Use policy of UpBound and agreed to be bound by it. The current Fair Use policy may be found in the following section.
11. The Fair Use policy of UpBound may change from time to time. In the event this policy changes UpBound shall advise the client in writing within 7 days of the change of the Fair Use policy. In the event UpBound are required to advise the client of such a change of the Fair Use policy the client may at its option terminate this Agreement by giving 30 days' notice to UpBound whereupon UpBound shall charge for services rendered up to the date of termination of this Agreement which is to be paid in full by the client on or before the date of the termination of this Agreement.
12. Notwithstanding anything contained in the Fair Use policy of UpBound as set out in this Agreement the client warrants to UpBound that it is the lawful owner of or has permission from the lawful owner to publish all intellectual property published on its website that it has requested UpBound to host. In the event that the client, in allowing UpBound to host its website breaches any law of but not limited to any State or Territory of the Commonwealth of Australia and/or the Commonwealth of Australia, UpBound may terminate this Agreement without prejudice to the rights of UpBound to seek one or all of compensatory damages indemnities relating to liability incurred as a result of the client's aforementioned breaches.
13. UpBound may terminate the Agreement without notice to the client in the event UpBound becomes aware of any of the following:-
  - a. content on the client's website (including content generated by users of the client's website) that does not comply with the Fair Use policy of UpBound as set out above;
  - b. notwithstanding the terms of Fair Use policy of UpBound any matters that is either offensive and/or obscene, seditious, blasphemous, defamatory or inappropriate in the opinion of UpBound;
  - c. repudiatory conduct as defined under clause 34
14. The client warrants to UpBound that it shall not by its conduct frustrate UpBound from hosting its website or withhold the necessary support to UpBound for the effective hosting of the website. UpBound shall not be liable for any interruption to the provision of the client or the hosting services where an

interruption is beyond the control of UpBound including but not limited to force majeure.

15. UpBound warrant to the client that 99.9% of the time in any given month the client's website will work when accessed from a browser with unrestricted access to the internet. In this Service Level Agreement the expression "availability" shall have the meaning of availability to users of the internet unaffected by local or network limitation. In the event that the website is available in any given calendar month for a period of time less than 99.9% UpBound shall give to the client a rebate of their monthly fees to be calculated on a pro rata basis for the time that the website was offline in that given calendar month. UpBound shall not be liable for any losses in circumstances where the client's site is offline at any point reflecting a monetary sum beyond the sum required paid for hosting in that given calendar month.
16. In the event UpBound terminates this Agreement as a result of any breach of this Agreement by the client and withdraws its hosting services from the client whereby the client's web page is no longer hosted on the internet:
  - a. UpBound will not be liable for any loss or damage arising from the withdrawal of the hosting services from the client.
  - b. Should any breach be resolved and the client desirous of reactivation of services, UpBound will charge a reactivation fee of no less than \$299 including GST to cover UpBound's reasonable costs incurred as a result of the breach, to be paid in full before reactivation.
  - c. Should a site be deactivated for a period in excess of 6 month for any reason, a new licence would need to be purchased at a cost of \$1495.
17. UpBound will advise the client of any foreseeable interruption to the hosting service. As UpBound primarily uses the Squarespace CMS platform, the client can check the status of Squarespace at <https://status.squarespace.com/>.

#### **COSTINGS & ACCEPTANCE OF THESE TERMS**

18. In this Agreement UpBound shall provide services to the client for fees as shown within the previous section 'Costs & Inclusions Summary'. By paying the requested 50% deposit in order to commence works, the client is signalling their agreement to the terms & conditions outlined in this Terms of Service, as well as the costings as noted in the Costs & Inclusions Summary of this document. The payment of the deposit is also the client's acknowledgement of the Ongoing Website Service Agreement as outlined in the 'Costs & Inclusions Summary'. Whilst hosting the website commences at the payment of this deposit, the client will commence payment of the Ongoing Website Service Agreement 60 days after on the 1st of the following calendar month.

#### **SERVICE PROVISION**

19. UpBound shall provide an ongoing support allocation inclusive in its regular ongoing costs with limits as defined under clauses 28-34. Any support incidents raised beyond the terms of the aforementioned Ongoing Website Service Agreement will be charged at a rate of \$90 per hour including GST. UpBound will waive charges for support at its discretion. The client will not be charged for any support incidents determined by UpBound to be attributable to a problem with the underlying software or an error on the part of UpBound. While UpBound provides 'unlimited support' as part of its Ongoing Website Service Agreements (where applicable), this term refers to an unlimited number of service requests. It does not serve to mean immediate support. UpBound will take all necessary steps to provide expedient assistance, however the client accepts that they are not being guaranteed immediate action or response as part of UpBound's ongoing service provisions.

#### **METHOD OF PAYMENT**

The client warrants to UpBound and agrees to:-

20. Execute all documentation necessary to allow UpBound to directly debit from the client's credit card monthly charges for all and any products and/or work undertaken by UpBound for the client.
21. Ensure that the client's credit card will have on the first of each calendar month funds sufficient to make a payment to UpBound to fully discharge any monies due and owing as at the first day of that calendar month.
22. Make payments to UpBound upon receipt of a tax invoice from UpBound for hosting charges which shall be charged in advance.
23. Make payments punctually on the first of each calendar month in accordance with the billing periods which shall be based on calendar months.
24. That in the event the client defaults in any payment of a tax invoice from UpBound rendered to them UpBound may without notice to the client suspend or terminate hosting services until such time that the client has paid to UpBound in full any outstanding amounts due and owing pursuant to any tax invoice rendered by UpBound to the client pursuant to this agreement, including any reactivation fee under clause 16.
25. In the event this Agreement is terminated by the client the client agrees to pay to UpBound an amount to be costed on the basis of all services provided by UpBound that remain unbilled as at the date of termination.
26. In the event the client is a corporation, the directors of the client agree to be parties to this Agreement and guarantee the performance of the client and further agree to assume each and every liability and obligation of the client pursuant to this Agreement in the event of and as and when the directors of the client are called upon to do so for whatever reason. The obligations of the directors of the client include but are not limited to the payment of any and all tax invoices rendered to the client by UpBound.
27. The client agrees to advise UpBound of any change of contact details. UpBound will not be liable for any consequences of tax invoices or other notices or documentation being sent to incorrect addresses as a result of a failure of the client to provide notice of a change of said details.

#### **FAIR USE, REPUDIATORY CONDUCT AND DISPUTES**

28. UpBound does not apply fixed limits to the amount of support we give to our clients. The client understands that UpBound must ensure it is able to provide quality service to all its clients, and that no clients should be disadvantaged by the behaviour of others. The client agrees to be bound by UpBound's Fair Use policy outlined in this section.
29. The client agrees not to engage in excessive contact, which includes but is not limited to:
  - a. Repeatedly asking for assistance with matters outside UpBound's control, responsibility, or remit, after UpBound has advised the client that this is the case, including but not limited to: basic computer assistance, business advice or other technical assistance not related to UpBound's services.
  - b. Repeatedly and unreasonably asking for assistance with matters with which UpBound has previously provided training. The client agrees to endeavour to understand the training they are provided.
  - c. Excessive phone calls or emails to the extent that it has a detrimental impact on our ability to service our other clients.

- d. Demands for assistance with non-urgent matters outside of UpBound's support hours where urgency is determined at the sole discretion of UpBound.
30. If UpBound determines that the client is engaging in excessive contact, it will provide written notice to the client of this determination, and the client agrees that UpBound at its sole discretion may as a result undertake any or all of the following actions:
    - a. Apply a restriction on contact time permitted with the client
    - b. Invoice the client for all or a portion of time spent on the phone, responding to emails and support tickets, and any other undertakings required to service the client
    - c. Suspend and/or terminate the client's provision of services, not before a third warning has been given. Warnings may not be given any more frequently than every seven days.
  31. UpBound agrees that notices of excessive contact must be provided within 30 days of said excessive contact and the determination can only be made on the basis of activity within the 90 days preceding the date the notice is issued.
  32. The client agrees that any dispute it wishes to make to a notice of excessive contact must be provided in writing to UpBound within 14 days of the issue of the notice.
  33. The client agrees not to engage in repudiatory conduct, which includes but is not limited to:
    - a. Abusive behaviour towards staff, agents, partners or directors of UpBound, which includes threatening behaviour and/or speech
    - b. Defamation of staff, agents, or directors of UpBound, or of UpBound or related businesses
  34. The client agrees that in instances of repudiatory conduct, UpBound is entitled to immediately terminate this agreement without prejudice to its rights to seek one or all of compensation, damages, or indemnities relating to the conduct.

#### SALES FUNNELS

35. A Sales Funnel service - unless otherwise specified - includes the following tangible items:
  - a. 3x landing pages, hosted either on the client's own website should this website be of UpBound's creation, or on UpBound's promotions website, upboundpromos.com.au
  - b. A Facebook promotional media kit, consisting of a cover image, post image & event cover where relevant
  - c. Website promotional material, consisting of a horizontal banner ad, vertical banner ad and pop-up box in the instance of websites built by UpBound. Where a website is not built by UpBound, Upbound will supply the necessary files to the client's current web developer for them to action on the client's behalf. Such necessary items are to be at UpBound's discretion
  - d. 5 part content marketing system in the form of 500-1000 word articles sent as automated emails on the client's behalf. The client will be given these in the form of Word Documents to use as they wish in additional marketing ventures of their choosing, such as blog posts, mailouts, etc.

- e. A double-sided DL flyer design relating to the contents of the associated strategy.
36. A Sales Funnel service - unless otherwise specified - does not include:
    - a. Costs of production and distribution such as printing, flyer distribution and direct mail
    - b. Facebook advertising expenses, no advertising spend on other social media platforms
    - c. Implementation of email banners where email accounts have not been provided by UpBound as part of any previous service
    - d. Implementation of web banner ads and pop ups where a website or other digital service has not been provided by UpBound as part of any previous service
  37. The client acknowledges that these costs relate to variables that are highly subjective to individual clients, such as target markets, service areas and population densities, which all impact print quantities and distribution costs. The client subsequently acknowledges that these will incur charges beyond the scope of this Partnership Proposal.

#### GOOGLE SERVICES

38. As part of our website build process, we establish the business & website in Google Search Console, Google Analytics & Google My Business (Google+). Given the breadth of these services, the setup services we render are only so far as creating logins, connecting through website advanced settings & commencing claiming/verification procedures. It is up to the client to see these accounts, platforms and services contain any and all information that is current for, and relevant to, their business.

#### LOGOS

39. A round is defined as a single written correspondence, such as an email, a Word document or a workbook.
40. Changes beyond the 2 included can be purchased for an additional \$90.00 per round, inc. GST.

#### MINI COURSES

41. UpBound will not be held responsible nor liable for changes to items such as updates to subscription plans or recommended image sizes. Whilst UpBound will always do its best to provide up to date information on course contents, the client acknowledges there may be some discrepancies between the course contents and unforeseen changes.
42. Upon receiving login details for any platform and/or service UpBound sets up for the client, the client acknowledges that they become solely responsible for the account and the content they create. The client also acknowledges they are bound by the platform/service's own terms of use.
43. UpBound will not be held responsible for restoring templates that the client may either accidentally or intentionally delete or change. If the client requires the restoration of a template, UpBound reserves the right to refuse, or charge a fee for doing so.

#### REFUND POLICY

44. UpBound DO NOT OFFER REFUNDS.