



## TERMS AND CONDITIONS

Nerdy Birdie LLC herein referred to as the "Service Provider".

### Acceptance.

SERVICE PROVIDER'S ACCEPTANCE OF CLIENT'S PAYMENT FOR SERVICE IS EXPRESSLY MADE CONDITIONAL ON CLIENT'S ACCEPTANCE OF THE FOLLOWING TERMS AND CONDITIONS OF SERVICE, WHICH ARE IN LIEU OF ANY ADDITIONAL OR DIFFERENT TERMS CONTAINED IN CLIENT'S PURCHASE ORDER OR OTHER DOCUMENT OR COMMUNICATION PERTAINING TO CLIENT'S ORDER OR THE GOODS. CLIENT'S ASSENT TO THE TERMS AND CONDITIONS CONTAINED IN THIS DOCUMENT SHALL BE CONCLUSIVELY PRESUMED FROM CLIENT'S ACCEPTANCE OF ALL OR ANY PART OF THE GOODS OR FROM PAYMENT BY CLIENT FOR ALL OR ANY PART OF THE GOODS. NONE OF THESE TERMS AND CONDITIONS MAY BE ADDED TO, MODIFIED, SUPERCEDED OR OTHERWISE ALTERED, EXCEPT BY A WRITTEN INSTRUMENT SIGNED BY AN AUTHORIZED EXECUTIVE OF SERVICE PROVIDER. FAILURE OF SERVICE PROVIDER TO OBJECT TO ANY TERMS OR CONDITIONS WHICH MAY BE CONTAINED IN ANY DOCUMENT OR FORM OF CLIENT SHALL NOT BE CONSTRUED AS A WAIVER OF THESE CONDITIONS, NOR AS AN ACCEPTANCE OF ANY SUCH TERMS AND CONDITIONS.

### Services Assumptions

Nerdy Birdie's work estimates are based on work performed during normal work hours (8 hours) between the hours of 08:00 and 17:00 CDT, Monday to Friday, holidays excepted. No on-site orientation, training, work required for project specific requirements is included in a quotation unless expressly specified by Nerdy Birdie LLC. Nerdy Birdie LLC shall provide its services with good faith effort to meet its obligations under Contract in a timely and workmanlike manner, using knowledge and recommendations for performing the services which meet generally acceptable standards in Nerdy Birdie's community and region, and will provide a standard of care equal to, or superior to, care used by Nerdy Birdie LLC similar to Nerdy Birdie LLC on similar projects. As Nerdy Birdie LLC cannot fully control the result or outcome of a given project, Nerdy Birdie LLC makes no warranty, expressed or implied. Moreover, Nerdy Birdie LLC offers no refunds under any circumstances. All work is rendered and produced as is upon delivery to Client, Nerdy Birdie LLC makes no warranties of any kind. Due to the amount of care and diligence Nerdy Birdie LLC provides each project, Nerdy Birdie LLC does not provide re-compensations. E-mail sent to us may not be secure. If you choose to send us an e-mail message, we may retain the content of the e-mail, your e-mail address and our response, and it becomes the property of Nerdy Birdie LLC.

### Notice

All notices required or permitted under this Agreement shall be in writing and shall be deemed delivered when delivered in-person, via e-mail, via text, or deposited in the United States Postal Service via Certified Mail. Material or opinions of Nerdy Birdie LLC and its employee's do not constitute legal advice, and no person should act or refrain from acting on the basis of any information or opinion contained in this website or provided by Nerdy Birdie LLC or its employees. Clients are urged to seek legal advice and confirmation of critical information from a licensed attorney found at or on this site before relying on it. Nerdy Birdie LLC assumes no responsibility for any errors appearing on this website or otherwise. Further, Nerdy Birdie and its employees assume no responsibility for the use of any information provided. Information provided on this site is subject to change without notice. Client should not rely on this information or its applicability to any specific circumstances without speaking with an attorney. The information is not guaranteed to be correct, complete, or current. We offer no warranty expressed or implied of the accuracy or reliability of the information on this website or on any other website, to which this site is linked. Nerdy Birdie LLC cannot promise that the information on this site is applicable to your circumstances, correct, complete, or up-to-date; that your access will be uninterrupted; or that material accessible from this site is free of viruses. Persons contacting Nerdy Birdie LLC, through the Internet e-mail function provided on this site should not send confidential or sensitive information. The information provided on this site is not confidential, and does not create a contractual relationship between you and Nerdy Birdie LLC, or its employees unless or until you have retained and/or contracted us, complete with documentation confirming the retention and/or contract and its scope. Material on this site may be considered advertising under the rules of the Supreme Court of Texas. The hiring of a consulting and/or marketing firm is an important decision that should not be based solely on advertising.

### Term

The Services Provider shall begin providing Services to Client once initial payment is rendered to Nerdy Birdie LLC. Prior to this date, Client and Nerdy Birdie LLC will have had detailed discussions regarding projected timelines and deliverable dates, at which point the Client and Nerdy Birdie LLC shall mutually agree upon a timeline for the Deliverables & Services. Upon which time the Nerdy Birdie LLC has completed the project for the Client, the end of the contract will be met.

### Taxes

Unless otherwise set out in Nerdy Birdie LLC's proposal or quotation, prices do not include taxes, which are payable by Client. The Client shall be responsible for all such taxes, resulting from these Conditions of Service or any associated purchase. Nerdy Birdie LLC is required to impose taxes on orders and shall invoice the Client for such taxes according to applicable law or regulations, unless Client furnishes to Nerdy Birdie LLC, at the time of order, a completed exemption certificate acceptable to the authorities imposing the tax. Client shall defend, indemnify, and hold harmless Nerdy Birdie LLC from and against all liabilities for such taxes or charges and attorneys' fees or costs incurred.

### Terms of Payment

Unless otherwise set out in Nerdy Birdie LLC's proposal or quotation, terms are net 30 days from date of invoice. Late payments will be subject to interest charges at the rate of fifteen percent (15%) per month.

### Copyrighted Works

Nerdy Birdie LLC hereby assigns to the Client all right, title, and interest in all final deliverables. Including: all digital photographic images and videos or audio recordings made for the Client during Nerdy Birdie LLC's work for them, including, but not limited to, any royalties, proceeds, or other benefits derived from such final digital works;

1. Nerdy Birdie LLC retains the right to use the Work Product in Nerdy Birdie LLC product portfolio.
2. Any unused and/or any work performed not approved by Client as part of final product deliverable under this agreement ("Work Product), including any and all notes, ideas, reports, strategies, documentation, digital works, audiovisual works, literary works and physical works such as paintings, sculptures and/or furniture not part of Client's final digital deliverables, will remain the sole property of the Nerdy Birdie LLC, and Nerdy Birdie LLC hereby retains all right, title, and interest therein, including all product digital, physical, audiovisual, literary, moral rights and other copyrights, patent rights, trade secret rights, and other proprietary rights therein as provided under federal, state and common-law.

Additionally, Nerdy Birdie LLC claims no legal liability over any digital works, ideas, all digital photographic images and videos or audio recordings, provided to Nerdy Birdie LLC by the Client. Client is responsible for ensuring that all materials provided to Nerdy Birdie LLC are copyrighted, and or licensed, by Client.

#### Expenses

The Nerdy Birdie LLC shall be responsible for all expenses related to providing the Services under this Agreement EXCEPT any "out-of-pocket" expenses. Out-of-pocket expenses are considered to be an expense that requires the Nerdy Birdie LLC to pay a third (3rd) party as a direct or indirect result of providing the Services. However, the Nerdy Birdie LLC will be required to pay for their internal expenses which includes, but is not limited to, supplies, equipment, operating costs, business costs, employment costs, taxes, Social Security contributions and/or payments, disability insurance, unemployment taxes, and any other cost that may or may not be in connection with the Services provided by the Nerdy Birdie LLC. Client agrees to pay the Nerdy Birdie LLC within thirty (30) days of receiving notice of any expense directly associated with the Services. Upon request by the Client, the Nerdy Birdie LLC may have to show receipt(s) or proof(s) of purchase for said expense.

#### Confidentiality

Nerdy Birdie LLC acknowledges that it will be necessary for the Client to disclose certain confidential and proprietary information to the Nerdy Birdie LLC in order for the Nerdy Birdie LLC to perform their duties under this Agreement. Nerdy Birdie LLC acknowledges that disclosure to a third (3rd) party or misuse of this proprietary or confidential information would irreparably harm the Client. Accordingly, Nerdy Birdie LLC will not disclose or use, either during or after the term of this Agreement, any proprietary or confidential information of the Client without the Client's prior written permission except to the extent necessary to perform the Services on the Client's behalf.

Proprietary or confidential information includes but is not limited to:

1. The written, printed, graphic, or electronically recorded materials furnished by Client for Nerdy Birdie LLC to use;
2. Any written or tangible information stamped "confidential," "proprietary," or with a similar legend, or any information that Client makes reasonable efforts to maintain the secrecy of, business or marketing plans or strategies, customer lists, operating procedures, trade secrets, design formulas, know-how and processes, computer programs and inventories, discoveries and improvements of any kind, sales projections, and pricing information; and
3. Information belonging to customers and suppliers of the Client about whom the Nerdy Birdie LLC gained knowledge as a result of the Nerdy Birdie LLC's Services to the Client.

#### Force Majeure

Nerdy Birdie LLC shall not be liable for any failure in performance to the extent caused by an Act of God, riot, civil disturbance, Government Act or regulation, fire, flood, explosion, production delays, accident, or other cause beyond Nerdy Birdie LLC's reasonable control. The period of the contract shall be correspondingly extended by the period of such delay.

#### Indemnification.

It is agreed between the Parties for the purpose of the Terms and Conditions, Client's authorization to disclose/release confidential and/or proprietary information to third (3rd) party is a liability to the Client and thereby a liability to Nerdy Birdie LLC. The Client, upon remittance payment to Service provider does hereby this day Release and by these presents do Release, acquit, and forever discharge Nerdy Birdie LLC, and its heirs, executors, agents, employees, successors, assigns, partners, attorneys, and any person, partnership, corporation, association, organization or entity now or previously acting, directly or indirectly, in the interest of or on behalf of Nerdy Birdie LLC and its attorneys from any and all Claims or causes of action of any kind whatsoever, including any and all claims or demands for liability, damages, lost profits, damage to business reputation, libel, slander, or expense under any law or duty imposed by law, at common law, statutory or otherwise, in contract or in tort, which Client has or might have against Nerdy Birdie LLC, known or unknown, future or present, directly or indirectly attributed to and/or resulting and/or in connection with Nerdy Birdie LLC's Contracting Agreement with Client, it being intended to release all existing claims of any kind, whether asserted at this time or not. This Release includes, but is not limited to any and all Claims of any kind, whether asserted at this time or not by Client, and its members, owners, officers, directors, officials, agents, employees, former employees, successors, assigns, partners, parent, subsidiaries of its parent, successor company, division, branches, attorneys, insurers, and any person partnership, corporation, association, organization or entity now, in the future, or previously acting, directly or indirectly, in the interest of or on behalf of Client.

#### Disputes

If any dispute arises under this Agreement, Nerdy Birdie LLC and the Client shall negotiate in good faith to settle such dispute. If the parties cannot resolve such disputes themselves, then either party may submit the dispute to mediation by a mediator approved by both parties. If the parties cannot agree with any mediator or if either party does not wish to abide by any decision of the mediator, they shall submit the dispute to arbitration by any mutually acceptable arbitrator, or the American Arbitration Association (AAA). The costs of the arbitration proceeding shall be borne according to the decision of the arbitrator, who may apportion costs equally or in accordance with any finding of fault or lack of good faith of either party. If either party does not wish to abide by any decision of the arbitrator, they shall submit the dispute to litigation. The jurisdiction for any dispute shall be administered in the jurisdiction where the Services are being provided.

#### Governing Law.

Any agreement arising out of this transaction shall be deemed to have been made in Harris County, Houston, TX. The parties agree that the validity, interpretation and performance of any agreement arising out of this transaction shall be governed by the laws of the State of Texas without regard to conflicts of interest laws.

#### Severability

This Agreement shall remain in effect in the event a section or provision is unenforceable or invalid. All remaining sections and provisions shall be deemed legally binding unless a court rules that any such provision or section is invalid or unenforceable, thus, limiting the effect of another provision or section. In such case, the affected provision or section shall be enforced as so limited.

#### Sound Body and Mind

Client hereby certifies and warrants that Client has read the forgoing Terms and Conditions, and Client is legally competent and of sound mind. Additionally, Client has reviewed and discussed the same with legal counsel and understands and accepts the terms and provisions thereof.

#### Entire Agreement

This Agreement, along with any attachments or addendums, represents the entire agreement between the parties. Therefore, this Agreement supersedes any prior agreements, promises, conditions, or understandings between the Client and Nerdy Birdie LLC. This Agreement may be modified or amended if the amendment is made in writing and is signed by both Nerdy Birdie LLC and Client. These terms and conditions supersede any and all subsequent terms and conditions and/or service contract included with before or after any order and/or invoice, whether or not such terms and conditions and/or service contract were signed by client. Nerdy Birdie LLC reserves the right to change these terms and conditions at any time for any reason. Nerdy Birdie encourages you to review these Terms and Conditions and Other Notices periodically for updates that will be posted on this website. If you have any further questions, please send an e-mail to us at [co.create@nerdyb.com](mailto:co.create@nerdyb.com)

We thank you for your business and we look forward to helping you shine!