

KPCommerce.net Terms of Service Agreement

All services provided by **KPCommerce.net** are subject to the following terms.

ACCEPTANCE OF TERMS

This Agreement is in effect and fully enforceable as of June 13th, 2011.

By submitting payment for our services you (“**client**”) are agreeing to all of our terms of service as defined herein. **KPCommerce.net** reserves the right to change or modify these terms at any time and without prior notice.

Purchase and payment for a website design package or other available service from our website at www.kpcommerce.net shall be considered a mutually agreeable entry into a binding and contractual relationship between **KPCommerce.net** and **client**, subject to all terms and conditions contained herein. Acceptance of these terms is executed during online purchase checkout.

If a purchase is made offline, **client** must sign and delivery a copy of this Terms of Service Agreement (“**contract**”) with any applicable payment. ([download Terms of Service Agreement here](#))

WRITTEN NOTICE

All correspondence relating to the service must be delivered in writing by both parties. Acceptable forms of written notices shall include electronic correspondence by email, written documents sent by fax or postal mail. All notices shall be considered delivered at the dates and times as follows: Email – the date and time as indicated in the sender’s header; Fax – the time stamp as printed on the document by the sender’s fax machine; Postal Mail – effective five (5) business days following the date of postmark.

COSTS & PAYMENTS

All new web design projects or other services that have a total cost of \$1000.00 USD or less require full payment upon contract signing and prior to start of work or delivery of services.

Projects with a total cost that exceeds \$1000.00 USD may be negotiated into a structured payment plan as agreed upon by the parties. Any such structured plan shall include at a minimum, two equal payments with an initial 50% deposit due at contract signing and the remaining 50% balance will be due exactly 30 days following the project start date. If a payment plan is entered into, KPCommerce.net may partially restrict client’s access to certain areas of the shopping cart platform and may also prevent internet publication of the website until such time that full payment is received from the client. KPCommerce.net additionally retains the right to

hold all graphics and project development files, with the exception of content and graphics that are provided by the client, until payment is received in full under such items.

Payments for all services are accepted online through our website using credit card or PayPal, and via bank wire or personal/business check. Any check payments that are returned by the bank shall subject client to a \$50 default fee.

OPERATIONAL BUSINESS HOURS

Our business hours are posted on the [Contact](#) page of our website. If the client requires service or maintenance outside the described hours, client agrees to pay our base rate of \$45.00 per hour with an additional charge of \$25.00 per hour for after-hours assistance. Acceptance of this clause by client does not obligate KPCcommerce.net to perform services outside its normal business hours but in no case will client be charged these monies unless these services are rendered during off-hours.

NOTICE OF SERVICES

Client acknowledges that KPCcommerce.net shall place a link or links on the client's website for purposes of providing notice that our services were employed for development of your website and shopping cart solution. Any such link shall be no more than 8px in size and posted inconspicuously in the footer of each website page.

Client agrees to maintain the link(s) and shall not modify nor remove without the express written consent by KPCcommerce.net.

COPYRIGHTS, OWNERSHIP AND LICENSING

Shopping Cart Software: KPCcommerce.net utilizes 3rd party providers for all online shopping cart solutions and we are currently an Authorized Reseller of the BigCommerce™ (Interspire, Inc.) platform, who is the developer and proprietary owner of the shopping cart software used by KPCcommerce.net. Copyrights and ownership of all programming and related website design templates provided shall be retained by BigCommerce.

Custom Website Designs: Any and all modifications made by KPCcommerce.net to the available design templates offered by any 3rd party shopping cart platform(s) shall be deemed as "Custom Website Designs". KPCcommerce.net transfers all rights and ownership of any custom website design to client upon completion of the project.

Third-Party Assets: KPCcommerce.net does not own and does not resell any 3rd party graphics or content to develop the client website. We simply design your site utilizing content you provide or authorize us to use for development. These assets and content may include but are not limited to product images, product descriptions, marketing materials, website programming such as iframes, javascript or flash elements, and any other digital asset which is copyrighted by the respective developer or owner of such asset. Client must be licensed and authorized by each

individual owner of all copyright material to utilize such material on client website. Any 3rd party assets and all associated copyrights which are utilized or provided as part of client's website design, the ownership of which shall be retained by the respective owner(s) and it is the sole responsibility of the client to acquire authorization and license from the owner to utilize any such assets.

KPCommerce.net will build client website using assets and content that is provided by client or that which client is licensed to use. KPCommerce.net shall assume no liability for unauthorized use by client of any 3rd party assets or copyright material.

Custom Graphics Design: Any graphics or marketing elements that are created by KPCommerce.net for client may include 3rd party digital assets such as illustrations or photographs. KPCommerce.net shall only utilize elements which may be freely available for use in the public domain or that which may be purchased by KPCommerce.net under a royalty-free license agreement. KPCommerce.net shall transfer all rights and ownership of custom graphic designs to client upon completion of project.

RESALE OF DESIGNS

KPCommerce.net acknowledges and agrees that any custom website design or custom graphic design that is created shall not be duplicated or resold to any 3rd party. KPCommerce.net reserves the right to resell custom website designs and/or custom graphic designs that remain unpaid, are not in legal use, or have been authorized for resale, by the original client.

USE FOR MARKETING

Client acknowledges and agrees that KPCommerce.net reserves the right to utilize its work for marketing purposes and may display websites and graphics that have been designed by KPCommerce.net on its own website, website of its affiliates or partners and in any other marketing material to aid as examples of our work. KPCommerce.net agrees to provide a link-back to client's website if displayed on www.kpcommerce.net.

CANCELLATIONS & REFUNDS

All requests to terminate services must be delivered to KPCommerce.net in writing. Client has the right to cancel service at any time prior to completion of the service but is subject to the following conditions:

- Cancellations and Refunds shall only apply to those services which are rendered directly by KPCommerce.net. Any 3rd party services paid for by the client such as shopping carts, domains, website services, email accounts, etc. are independent of this agreement and client must negotiate directly with the respective service provider to obtain cancellation or refund.
- A cancellation fee of 20% (twenty percent) of the total project cost will be retained by KPCommerce.net for projects that have been booked, but cancelled prior to the start date.

- A cancellation fee of 50% (fifty percent) of the total project cost will be retained by KPCommerce.net for projects that have been started and are in the design process.
- Service or project completion shall be deemed to have occurred at the moment when KPCommerce.net has provided written notice to client, at which time no refund shall be due or paid by KPCommerce.net, regardless of whether the client has or has not formally approved its completion. KPCommerce.net shall only give notice of service or project completion when there is a good faith belief that its obligation to the client contract is fulfilled.
- Refunds will be processed within 30 days from the date that a cancellation is approved by KPCommerce.net based on the conditions stated above.
- Chargebacks will not be negotiated and KPCommerce.net will take all actions necessary to dispute claims of this refund policy.

DELAY FEES

In order to maintain an effective and efficient workflow for all our clients, it is imperative that KPCommerce.net not be restrained to its project schedule due to client related delays. Once a project has been booked and deposit or other payment made, KPCommerce.net will make all efforts to continue appropriate progress on the site development but this effort is partly based on the level of communication and cooperation provided by the client. KPCommerce.net will be required to request data from client which is necessary to facilitate completion of the website project and client is expected to respond and deliver that data to KPCommerce.net in a reasonable period of time.

Should client, in spite of all efforts by KPCommerce.net and/or regardless of communications from client, fail to provide required or requested data within 60 days from date of request, KPCommerce.net reserves the right to charge client a minimum Delay Fee of 15% (fifteen percent) of the total project cost, or more if deemed necessary and in such case, no additional services will be performed by KPCommerce.net until such time that client has delivered the outstanding Delay Fee charges.

PROJECT COMPLETION

KPCommerce.net agrees to make every good-faith effort to complete all design work purchased by client in a timely manner. Time frames which can be expected for project completion are based on certain things such as projected start date as determined by KPCommerce.net and the timely delivery of required digital assets and elements that must be provided by client.

KPCommerce.net shall provide work completion estimates through its website and detailed information can be found directly on the project purchase page. Under the Product Details section of the purchase page, just below the price, estimated project start times will be found in the “Availability” field. For example, the following field notice “Availability: Start time = 1 week” would indicate that we estimate beginning your project in approx. 1 week from date of purchase. In the Product Description section of the website page, we will also provide information on typical completion times. For example, “Average Completion Time = 2 weeks”

would indicate that from the time the project begins (assuming that all client assets have been received) to the time it is available for active use by the client is approx. 2 weeks.

If KPCommerce.net anticipates any delays in completion as it relates to the estimates provided, client will be notified with an explanation for the delay and any remedies that may be required.

COMMUNICATION

KPCommerce.net will work closely with client in communicating by email and phone on a regular basis throughout the project to ensure that all needs and requirements are properly fulfilled. If, in spite of reasonable efforts by KPCommerce.net, client does not respond or fails to communicate with KPCommerce.net for a period of (60) sixty consecutive days during project development, the contract will be automatically cancelled and client will be subject to the terms of refund as described herein.

WARRANTY

KPCommerce.net shall make every reasonable effort to provide services that meet the client specifications as based on the description in the purchase agreement. In the event that KPCommerce.net should become unable to fulfill its obligation under these terms, alternate arrangements will be made by KPCommerce.net or a full or partial refund, as determined exclusively by KPCommerce.net, may be issued to client.

KPCommerce.net warrants that all products or designs will be fully functional and operational upon delivery to client. Notwithstanding, both client and KPCommerce.net agree that client will have a need to make its own modifications to either the design, shopping cart or both, such as adding new products, changing pricing, posting ad banners, etc. As a result of this fact, once client is in possession of the product or design, the warranty shall be reduced to “as is” and KPCommerce.net shall have no obligation to perform any additional services and/or repairs.

KPCommerce.net will, from the date of client acceptance and during business hours only, provide 30 days of unlimited consultation and training regarding the use of the shopping cart software and related functionality. At conclusion of the 30 day period, KPCommerce.net shall have no further obligation to assist and client will be referred directly to the shopping cart provider for all support needs.

KPCommerce.net shall retain a master file of all design templates and files for client website. Client may purchase a Re-Install of all design modifications for a cost of \$200.00 USD. Re-Installation does not include product databases, descriptions, special fields, videos or any other website content and only applies specifically to re-installation of the design template files.

KPCommerce.net does not warrant and shall have no obligation to service any products purchased by client from 3rd parties such as shopping cart software, SSL certificates, domain services, email accounts and any other website related component. Client will be referred to the respective provider for any and all support issues.

PROJECT CONSIDERATION

KPCommerce.net reserves the right to accept or decline any and all services and at its own discretion.

CONFIDENTIALITY

KPCommerce.net may be required to have direct access to personal information of the client to complete the design project, including but not limited to; domain services login details, email account login details, shopping cart login details, merchant account login details and any other information that may be needed to assist KPCommerce.net in the full development and functionality of client website.

Any and all personal information which is provided by client to KPCommerce.net shall be considered extremely confidential and every reasonable effort will be made to keep such information private and safe-guarded and will not be shared with any 3rd party without express written consent from client and only for good cause.

LIABILITY

In no event shall KPCommerce.net be liable to client for any direct, indirect, special, punitive, incidental or consequential damages arising out of the use of the website, services, and/or goods provided by KPCommerce.net. This shall include without limitation, loss of profits, business interruption, loss of data or information, or any other losses that may be directly resulting from the use of the website, services, and/or goods provided by KPCommerce.net. Client agrees to indemnify and hold harmless KPCommerce.net and their directors, officers, employees, successors, and assigns from and against any and all liability, damages, losses, claims, demands, actions, judgments, costs, attorney's fees and expenses incurred in connection with any action against client. Client agrees that it will not seek judgment against KPCommerce.net and further acknowledges and agrees that KPCommerce.net will not be responsible in any way for any such losses, damages, liabilities, claims, actions, judgments, costs, demands, attorneys' fees, and expenses brought against the client. Any and all risks and liabilities associated with the use, operation, service, quality and performance of the website and/or product shall remain the sole responsibility of the client.

GOVERNING LAW

This Terms of Service Agreement is entered into by and between **KPCommerce.net** and **client**, and is made in Morris County, New Jersey, USA, under and shall be construed in accordance with the internal laws of the State of New Jersey and the United States of America.

By: KPCommerce.net, PO Box 2163, Morristown, NJ 07962-2163