



Antonino Foti | Web/Graphic Designer
production@adfgraphics.com
917 864 4071
Brooklyn, NY
USA

TERMS AND CONDITIONS OF SERVICE

1. As used herein and throughout this Agreement:

1.1. Agreement means the entire content of this Basic Terms and Conditions document, the Proposal document(s), together with any other Supplements designated below, together with any exhibits, schedules or attachments hereto.

1.2. Client Content means all materials, information, factual, promotional, or other advertising claims, photography, writings and other creative content provided by Client for use in the preparation of and/or incorporation in the Deliverables.

1.3. Copyrights means the property rights in original works of authorship, expressed in a tangible medium of expression, as defined and enforceable under U.S. Copyright Law.

1.4. Deliverables means the services and work product specified in the Proposal to be delivered by Antonino Foti to Client, in the form and media specified in the Proposal.

1.5. Antonino Foti's tools means all design tools developed and/or utilized by Antonino Foti in performing the services, including without limitation pre-existing and newly developed software including source code, web authoring tools, type fonts, and application tools, together with any other software, or other inventions whether or not patentable, and general non-copyrightable concepts such as website design, architecture, layout, navigational and functional elements.

1.6. Final Works means all creative content developed by Antonino Foti, or commissioned by Antonino Foti, exclusively for the Project and incorporated in the Final Deliverables, including, but not limited to, any and all visual elements, graphic design, illustration, photography, animation, motion design, audio-visual works, sounds, typographic treatments and text, modifications to Client Content, and Antonino Foti's selection, arrangement and coordination of such elements together with Client Content and/or Third Party Materials.

1.7. Final Deliverables means the final versions of deliverables provided by Antonino Foti and accepted by Client.

1.8. Preliminary Works means all creative content including, but not limited to, concepts, sketches, visual presentations, or other alternate or preliminary designs and documents developed by Antonino Foti and which may or may not be shown and/or delivered to Client for consideration but do not form part of the Final Works.

1.9. Project means the scope and purpose of the Client's identified usage of the work product as described in the Proposal. In this agreement, "proposal" also refers to the online offer descriptions of my services located at <https://www.adfgraphics.com/process.html>.

1.10. Services means all services and the work product to be provided to Client by Antonino Foti as described and otherwise further defined in the Proposal.

1.11. Third Party - Software and Platform Services/Materials means proprietary third party sources which are incorporated into the Final Deliverables, including without limitation stock photography or illustration, cloud services, web application services that connect with your purpose.

1.12. Trademarks means trade names, words, symbols, designs, logos or other devices or designs used in the Final Deliverables to designate the origin or source of the goods or services of Client.

1.13. Working Files means all underlying work product and digital files utilized by Antonino Foti to create the Preliminary Works and Final Works other than the format comprising the Final Deliverables.



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2. PROPOSAL/Online Web Package Listing

The terms of the Proposal shall be effective for 30 days after written presentation to Client. In the event this Agreement is not executed by Client within the time identified, the Proposal, together with any related terms and conditions and deliverables, may be subject to amendment, change, substitution and cancellation.

3. FEES AND CHARGES

3.1. Fees. In consideration of the Services to be performed by Antonino Foti, Client shall pay to Antonino Foti fees in the amounts and according to the payment schedule set forth in the Proposal, and all applicable sales, use or value added taxes, even if calculated or assessed subsequent to the payment schedule.

3.2. Expenses. Client shall pay Antonino Foti's expenses incurred in connection with this Agreement as follows:

(a) incidental and out-of-pocket expenses including but not limited to costs for telephone calls, postage, shipping, overnight courier, service bureaus, typesetting, blueprints, models, presentation materials, photocopies, computer expenses

(b) travel expenses including transportation, meals, and lodging, incurred by Antonino Foti with Client's prior approval.

3.3. Additional Costs. The Project pricing includes Antonino Foti's labor fee only. Any and all outside costs including, but not limited to, equipment rental, photographer's costs and fees, photography and/or artwork licenses, prototype production costs, talent fees, music licenses and online access or hosting fees, and any other costs this specific to the client's requests will be billed to Client unless specifically otherwise provided for in the Proposal.

3.4. Payment Structure:

For Project Based Transactions:

50% Deposit of labor cost with applicable tax is due plus purchase of domain name with web hosting package and any other third party module(service via online or offline interface) on a subscription or outright payment basis. Work will commence after deposit is paid. There is an optional payment plan available in which the amount would be divided by 12 and the first 3 months would be needed as a deposit. Every month on the 1st(first) there after; the monthly payment would be charged until full payment is made. The client gives permission to Antonino Foti to charge the card on file. Client has an option to initiate the payment every month. The design work will only continue as payments are made. If payment is not received after 7 business days from the 1st(first); work will stop until payment is made.

For Monthly Subscription Based Service:

Full payment of the first months subscription is due as a deposit. Every month on the 1st(first) there after; the monthly fee would be charged as a continued monthly routine. The client gives permission to Antonino Foti to charge the card on file. Client has an option to initiate the payment every month. The design work will only continue as payments are made. If payment is not received after 7 business days; work will stop until payment is made.

For Hourly

A deposit for the first 4 hours will be needed as a deposit. A weekly report would be given to provide accountability and transparency. Hourly projects will be billed weekly. Arrangements can be worked out to determine how much to allocate per week. It is recommended for hours to be paid in advance prior to work commences.

After completion of work from written approval; all invoices of remaining amount are payable within 30 days of receipt of the invoice. A monthly service charge of 1.5 percent (or the greatest amount allowed by state law) is payable on all overdue balances. Payments will be credited first to late payment charges and next to the unpaid balance. Client shall be responsible for all collection or legal fees necessitated by lateness or default in payment. Antonino Foti reserves the right to withhold delivery and any transfer of ownership of any current work if accounts are not current or overdue invoices are not paid in full. All grants of any license to use or transfer of ownership of any intellectual property rights under this Agreement are conditioned upon receipt of payment in full which shall be inclusive of any and all outstanding additional costs, taxes, expenses, and fees, charges, or the costs of changes.



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4. CHANGES

4.1. General Changes. Unless otherwise provided in the Proposal, and except as otherwise provided for herein, Client shall pay additional charges for changes requested by Client which are outside the scope of the Services on a time and materials basis, at Antonino Foti's current standard hourly rate. Such charges shall be in addition to all other amounts payable under the Proposal, despite any maximum budget, contract price or final price identified therein. Antonino Foti may extend or modify any delivery schedule or deadlines in the Proposal and Deliverables as maybe required by such Changes.

4.2. Substantive Changes. If Client requests or instructs changes that amount to a revision in or near excess of 40 percent(%) of the time required to produce the Deliverables, and/or the value or scope of the Services, Antonino Foti shall be entitled to submit a new and separate Proposal to Client for written approval. Work shall not begin on the revised services until a fully signed revised Proposal and, if required, any additional retainer fees are received by Antonino Foti.

4.3. Timing. Antonino Foti will prioritize performance of the Services as may be necessary or as identified in the Proposal, and will undertake commercially reasonable efforts to perform the Services within the time(s) identified in the Proposal. Client agrees to review Deliverables within the time identified for such reviews and to promptly either, (i) approve the Deliverables in writing or (ii) provide written comments and/or corrections sufficient to identify the Client's concerns, objections or corrections to Antonino Foti. Antonino Foti shall be entitled to request written clarification of any concern, objection or correction. Client acknowledges and agrees that Antonino Foti's ability to meet any and all schedules is entirely dependent upon Client's prompt performance of its obligations to provide materials and written approvals and/or instructions pursuant to the Proposal and that any delays in Client's performance or Changes in the Services or Deliverables requested by Client may delay delivery of the Deliverables. Any such delay caused by Client shall not constitute a breach of any term, condition or Antonino Foti's obligations under this Agreement.

4.4. Testing and Acceptance. Antonino Foti will exercise commercially reasonable efforts to test Deliverables requiring testing and to make all necessary corrections prior to providing Deliverables to Client. Client, within five (5) business days of receipt of each Deliverable, shall notify Antonino Foti, in writing, of any failure of such Deliverable to comply with the specifications set forth in the Proposal, or of any other objections, corrections, changes or amendments Client wishes made to such Deliverable. Any such written notice shall be sufficient to identify with clarity any objection, correction or change or amendment, and Antonino Foti will undertake to make the same in a commercially timely manner. Any and all objections, corrections, changes or amendments shall be subject to the terms and conditions of this Agreement. In the absence of such notice from Client, the Deliverable shall be deemed accepted.

5. CLIENT RESPONSIBILITIES

Client acknowledges that it shall be responsible for performing the following in a reasonable and timely manner:

(a) coordination of any decision-making with parties other than Antonino Foti

(b) provision of Client Content in a form suitable for reproduction or incorporation into the Deliverables without further preparation, unless otherwise expressly provided in the Proposal

(c) final proofreading and in the event that Client has approved Deliverables but errors, such as, by way of example, not limitation, typographic errors or misspellings, remain in the finished product, Client shall incur the cost of correcting such errors; and ensuring that all information and claims comprising Client Content are accurate, legal and conform to applicable standards in Client's industry.

6. ACCREDITATION/PROMOTIONS

All displays or publications of the Deliverables shall bear accreditation and/or copyright notice in Antonino Foti's name in the form, size and location as incorporated by Antonino Foti in the Deliverables, or as otherwise directed by Antonino Foti. Antonino Foti retains the right to reproduce, publish and display the Deliverables in Antonino Foti's portfolios and websites, and in galleries, design periodicals and other media or exhibits for the purposes of recognition of creative excellence or professional advancement, and to be credited with authorship of the Deliverables in connection with such uses. Either party, subject to the other's reasonable approval, may describe its role in relation to the Project and, if applicable, the services provided to the other party on its website and in other promotional materials, and, if not expressly objected to, include a link to the other party's website.

7. CONFIDENTIAL INFORMATION

Each party acknowledges that in connection with this Agreement it may receive certain confidential or proprietary technical and business information and materials of the other party, including without limitation Preliminary Works ("Confidential Information"). Each party, its agents and employees shall hold and maintain in strict confidence all Confidential Information, shall not disclose Confidential Information to any third party, and shall not use any Confidential Information except as may be necessary to perform its obligations under the Proposal except as may be required by a court or governmental authority. Notwithstanding the foregoing, Confidential Information shall not include any information that is in the public domain or becomes publicly



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known through no fault of the receiving party, or is otherwise properly received from a third party without an obligation of confidentiality.

8. RELATIONSHIP OF THE PARTIES

8.1. Independent Contractor. Antonino Foti is an independent contractor, not an employee of Client or any company affiliated with Client. Antonino Foti shall provide the services under the general direction of Client, but Antonino Foti shall determine, in Antonino Foti's sole discretion, the manner and means by which the services are accomplished. This Agreement does not create a partnership or joint venture and neither party is authorized to act as agent or bind the other party except as expressly stated in this agreement. All rights, if any, granted to Client are contractual in nature and are wholly defined by the express written agreement of the parties and the various terms and conditions of this Agreement.

8.2. Antonino Foti Agents. Antonino Foti shall be permitted to engage and/or use third party or other service providers as independent contractors in connection with the Services ("Design Agents"). Notwithstanding, Antonino Foti shall remain fully responsible for such Design Agents' compliance with the various terms and conditions of this Agreement.

8.3. No Exclusivity. The parties expressly acknowledge that this Agreement does not create an exclusive relationship between the parties. Client is free to engage others to perform services of the same or similar nature to those provided by Antonino Foti, and Antonino Foti shall be entitled to offer and provide design services to others, solicit other clients and otherwise advertise the services offered by Antonino Foti.

9. WARRANTIES AND REPRESENTATIONS

9.1. By Client. Client represents, warrants and covenants to Antonino Foti that:

- (a) Client owns all right, title, and interest in, or otherwise has full right and authority to permit the use of the Client Content
- (b) to the best of Client's knowledge, the Client Content is accurate, legal, conforms to ethical standards of the Client's industry, does not infringe the rights of any third party, and use of the Client Content as well as any Trademarks in connection with the Project does not and will not violate the rights of any third parties
- (c) Client shall comply with the terms and conditions of any licensing agreements which govern the use of Third Party Materials
- (d) Client shall comply with all laws and regulations as they relate to the Services and Deliverables.

9.2. By Antonino Foti

(a) Antonino Foti hereby represents, warrants and covenants to Client that Antonino Foti will provide the Services identified in the Agreement in a professional and workmanlike manner and in accordance with all reasonable professional standards for such services.

(b) Antonino Foti further represents, warrants and covenants to Client that (i) except for Third Party Materials and Client Content, the Final Deliverables shall be the original work of Antonino Foti and/or its independent contractors, (ii) in the event that the Final Deliverables include the work of independent contractors commissioned for the Project by Antonino Foti, Antonino Foti shall have secure agreements from such contractors granting all necessary rights, title, and interest in and to the Final Deliverables sufficient for Antonino Foti to grant the intellectual property rights provided in this Agreement, and (iii) to the best of Antonino Foti's knowledge, the Final Works provided by Antonino Foti and Antonino Foti's subcontractors does not infringe the rights of any party, and use of same in connection with the Project will not violate the rights of any third parties. In the event Client or third parties modify or otherwise use the Deliverables outside of the scope or for any purpose not identified in the Proposal or this Agreement or contrary to the terms and conditions noted herein, all representations and warranties of Antonino Foti shall be void.

(c) Except for the express representations and warranties stated in this Agreement, Antonino Foti makes no warranties whatsoever. Antonino Foti explicitly disclaims any other warranties of any kind, either express or implied, including but not limited to warranties of merchantability or itness for a particular purpose or compliance with laws or government rules or regulations applicable to the Project.

10. INDEMNIFICATION/LIABILITY

10.1. By Client. Client agrees to indemnify, save and hold harmless Antonino Foti from any and all damages, liabilities, costs, losses or expenses arising out of any claim, demand, or action by a third party arising out of any breach of Client's responsibilities or obligations, representations or warranties under this Agreement. Under such circumstances Antonino Foti shall promptly notify Client in writing of any claim or suit:

- (a) Client has sole control of the defense and all related settlement negotiations
- (b) Antonino Foti provides Client with commercially reasonable assistance, information and authority necessary to perform Client's obligations under this section. Client will reimburse the reasonable out-of-pocket expenses incurred by Antonino Foti in providing such assistance.



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10.2. By Antonino Foti. Subject to the terms, conditions, express representations and warranties provided in this Agreement, Antonino Foti agrees to indemnify, save and hold harmless Client from any and all damages, liabilities, costs, losses or expenses arising out of any finding of fact which is inconsistent with Antonino Foti's representations and warranties made herein, except in the event any such claims, damages, liabilities, costs, losses or expenses arise directly as a result of gross negligence or misconduct of Client provided that

- (a) Client promptly notifies Antonino Foti in writing of the claim
- (b) Antonino Foti shall have sole control of the defense and all related settlement negotiations
- (c) Client shall provide Antonino Foti with the assistance, information and authority necessary to perform Antonino Foti's obligations under this section. Notwithstanding the foregoing, Antonino Foti shall have no obligation to defend or otherwise indemnify Client for any claim or adverse finding of fact arising out of or due to Client Content, any unauthorized content, improper or illegal use, or the failure to update or maintain any Deliverables provided by Antonino Foti.

10.3. Settlement Approval. The indemnifying party may not enter into any settlement agreement without the indemnified party's written consent.

10.4. Limitation of Liability. The services and the work product of Antonino Foti are sold "as is." In all circumstances, the maximum liability of Antonino Foti, his directors, officers, employees, design agents and affiliates ("Antonino Foti parties"), to Client for damages for any and all causes whatsoever, and Client's maximum remedy, regardless of the form of action, whether in contract, tort or otherwise, shall be limited to the net profit of Antonino Foti. In no event shall Antonino Foti be liable for any lost data or content, lost profits, business interruption or for any indirect, incidental, special, consequential, exemplary or punitive damages arising out of or relating to the materials or the services provided by Antonino Foti, even if Antonino Foti has been advised of the possibility of such damages, and notwithstanding the failure of essential purpose of any limited remedy.

10.5 Insurance - Service includes errors and omission insurance policy. This serves as another level of protection for all parties. If there is an issue that arises and despite Antonino Foti's efforts to rectify the matter; the Client would like to pursue insurance/legal action - Client agree to pursue this through the insurance process and not via a lawsuit. If Client is found to be correct after an official investigation; Client would be awarded the proper funds through the insurance company. If Antonino Foti is found to be correct, actions that are proven justified and/or found to be not in error; Client will reimburse Antonino Foti of any insurance/legal expenses that arises from Client's filing. This will aid in deterring any inconvenient court time for all parties. Also, will reduce stress. The concept in the service I am providing is a positive work transaction with protection (example: flying a plane with enhanced landing gear).

11. TERM AND TERMINATION

11.1. Term. This Agreement shall commence upon the Effective Date and shall remain effective until the Services are completed and delivered.

11.2. Termination. This Agreement may be terminated for convenience at any time by either party effective immediately upon notice, or the mutual agreement of the parties, or for cause if any party:

- (a) becomes insolvent, files a petition in bankruptcy, makes an assignment for the benefit of its creditors

or

- (b) breaches any of its material responsibilities or obligations under this Agreement, which breach is not remedied within ten (10) days from receipt of written notice of such breach.

11.3. In the event of termination, Antonino Foti shall be compensated for the Services performed through the date of termination in the amount of

- (a) any advance payment

- (b) a prorated portion of the fees due

or

- (c) hourly fees for work performed by Antonino Foti or Antonino Foti's agents as of the date of termination, whichever is greater; and Client shall pay all Expenses, fees, out of pockets together with any Additional Costs incurred through and up to, the date of cancellation. In the event of termination for convenience by Client, Client shall pay in addition to the above an early termination fee equal to 25% of the total project fee, Client shall not have rights to use Deliverables except upon written consent from Antonino Foti provided after such termination.



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11.4. In the event of termination for convenience by Antonino Foti or for cause by Client, and upon full payment of compensation as provided herein, Antonino Foti grants to Client such right and title with respect to those Deliverables provided to, and accepted by Client as of the date of termination. Upon expiration or termination of this Agreement:

- (a) each party shall return or, at the disclosing party's request, destroy the Confidential Information of the other party
- (b) other than as provided herein, all rights and obligations of each party under this Agreement, exclusive of the Services, shall survive.

12. GENERAL

12.1. Modification/Waiver. This Agreement may be modified by the parties. Any modification of this Agreement must be in writing, except that Antonino Foti's invoices may include, and Client shall pay, expenses or costs that Client authorizes by electronic mail in cases of extreme time sensitivity. Failure by either party to enforce any right or seek to remedy any breach under this Agreement shall not be construed as a waiver of such rights nor shall a waiver by either party of default in one or more instances be construed as constituting a continuing waiver or as a waiver of any other breach.

12.2. Notices. All notices to be given hereunder shall be transmitted in writing either by facsimile or electronic mail with return confirmation of receipt or by certified or registered mail, return receipt requested, and shall be sent to the addresses identified below, unless notification of change of address is given in writing. Notice shall be effective upon receipt or in the case of fax or email, upon confirmation of receipt (by automated confirmation or substantive reply by the recipient).

12.3. No Assignment. Neither party may assign, whether in writing or orally, or encumber its rights or obligations under this Agreement or permit the same to be transferred, assigned or encumbered by operation of law or otherwise, without the prior written consent of the other party except that this Agreement may be transferred or sold as part of a transfer or sale of the assigning party's entire business or portion thereof relating to the Project.

12.4. Force Majeure. Antonino Foti shall not be deemed in breach of this Agreement if Antonino Foti is unable to complete the Services or any portion thereof by reason of fire, earthquake, flood, hurricane or other severe weather, labor dispute, computer failure/data loss, act of war, terrorism, riot or other severe civil disturbance, death, illness or incapacity of Antonino Foti or any local, state, federal, national or international law, governmental order or regulation or any other event beyond Antonino Foti's control (collectively, "Force Majeure Event"). Upon occurrence of any Force Majeure Event, Antonino Foti shall give notice to Client of its inability to perform or of delay in completing the Services and shall propose revisions to the schedule for completion of the Services.

12.5. Governing Law and Dispute Resolution. The formation, construction, performance and enforcement of this Agreement shall be in accordance with the laws of the United States and the state of without regard to its conflict of law provisions or the conflict of law provisions of any other jurisdiction. In the event of a dispute arising out of this Agreement, the parties agree to attempt to resolve any dispute by negotiation between the parties. Please see paragraph 10.5 for the error and omission insurance policy. Only after, if the matter is not resolved via the insurance policy; the dispute, either party may commence mediation and/or binding arbitration through the American Arbitration Association, or other forum mutually agreed to by the parties. The prevailing party in any dispute resolved by binding arbitration or litigation shall be entitled to recover its attorneys' fees and costs. In all other circumstances, the parties specifically consent to the local, state and federal courts located in the state of New York. The parties hereby waive any jurisdictional or venue defenses available to them and further consent to service of process by mail. Client acknowledges that Antonino Foti will have no adequate remedy at law in the event Client uses the deliverables in any way not permitted hereunder, and hereby agrees that Antonino Foti shall be entitled to equitable relief by way of temporary and permanent injunction, and such other and further relief at law or equity as any arbitrator or court of competent jurisdiction may deem just and proper, in addition to any and all other remedies provided for herein.

12.6. Severability. Whenever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement is held invalid or unenforceable, the remainder of this Agreement shall nevertheless remain in full force and effect and the invalid or unenforceable provision shall be replaced by a valid or enforceable provision.



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12.7. Headings. The numbering and captions of the various sections are solely for convenience and reference only and shall not affect the scope, meaning, intent or interpretation of the provisions of this Agreement nor shall such headings otherwise be given any legal effect.

12.8. Integration. This Agreement comprises the entire understanding of the parties hereto on the subject matter herein contained, and supersedes and merges all prior and contemporaneous agreements, understandings and discussions between the parties relating to the subject matter of this Agreement. In the event of a conflict between the Proposal and any other Agreement documents, the terms of the Proposal shall control. Any other ambiguities shall be resolved with the most reasonable and legally valid construction, without regard to authorship of such provisions.

By Antonino Foti's auto execution of entering into this agreement and meeting the minimum requirement by the client's deposit or full payment via square payment portal, PayPal, cash, or check; have agreed to all of the terms and conditions of this Agreement effective as of the date of written approval and/or deposit or full payment. Each signatory or approval represents that they have the full authority to enter into this Agreement and to bind her/his respective party to all of the terms and conditions herein. If payment is not through the online payment portal; Client has 2 options below: Digital signature or hand written signature from a printout with date.

CLIENT WRITTEN SIGNATURE

CLIENT FULL NAME WRITTEN

DATE

OR

CLIENT DIGITAL SIGNATURE

CLIENT FULL NAME TYPED

DATE

Antonino Foti

PROVIDER AUTO SIGNATURE

ANTONINO FOTI

PROVIDER FULL NAME

Same date to client's signed date
DATE