

# STANDARD CLIENT TERMS AND CONDITIONS



## STANDARD TERMS AND CONDITIONS – SERVICES AND/OR GOODS

### 1. Definitions

- 1.1 **“Client”** means the person who enters into these terms, and whose name appears on the Cost Estimate and/or Invoice, and/or the person who accepts the Cost Estimate and/or Invoice;
- 1.2 **“Company”** means the relevant division or subsidiary of MMS Communications South Africa Proprietary Limited, registration number: 1976/001070/07, as reflected on the Invoice and/or Cost Estimate;
- 1.3 **“Cost Estimate”** means the Company quotation to which these terms and conditions relate in respect of the services and/or goods;

- 1.4 **“Invoice”** shall mean the invoice prepared by the Company after the acceptance by the Client of the Cost Estimate (or part thereof), which invoice shall be payable in accordance with these terms and conditions, or as otherwise agreed to between the Company and the Client, in writing;
- 1.5 **“Goods”** means the goods to be supplied by the Company to the Client, as reflected in the Company’s Cost Estimate which the Client has requested the Company to manufacture and deliver, and which goods the Client has agreed to remunerate the Company in accordance with the Cost Estimate and/or Invoice;
- 1.6 **“Services”** means those services supplied by Company to the Client, as they so appear in the Cost Estimate and/or Invoice, which the Client has requested the Company to render, and which services the Client has agreed to remunerate the Company in accordance with the Cost Estimate and/or Invoice;
- 1.7 A **“person”** includes any individual, company, corporation, firm, partnership, joint venture, association, organisation or trust (in each case, whether or not having separate legal personality) and references to any of them shall include a reference to the others.
- 1.8 Reference to **“these terms”** or to any other agreement or document referred to in these terms mean these terms or such other agreement or document as amended, varied, supplemented, modified or novated from time to time, and include the annexes.
- 1.9 The singular includes the plural and *vice versa* and the masculine includes the feminine and *vice versa*.
- 1.10 The headings and sub-headings are inserted for convenience only and shall not affect the construction of these terms.
- 1.11 These terms shall be subject to the Consumer Protection Act 68 of 2008 (**“CPA”**), insofar as any of the provision of the CPA may be applicable to these terms.

## 2. **Services rendered by Company**

- 2.1 The Client requires the services to be rendered by the Company and the Company has agreed to render the services to the Client in exchange for the payment of such amounts as reflected in the Cost Estimate and/or Invoice.

- 2.2 The sole terms and content of the services to be rendered by the Company to the Client, including the description and other details of all materials, goods, work, services, advice or any other tangible or intangible things to be produced, supplied, provided or done by the Company and its suppliers, shall be subject to these terms and conditions and the content of the Cost Estimate issued by the Company.
- 2.3 The Cost Estimate shall be properly signed and dated (or acknowledged in writing) by or on behalf of the Client and returned to the Company.
- 2.4 The Company agrees to render the services to the Client and the Client agrees to purchase the services from the Company for the amount as stipulated in the Cost Estimate/Invoice;
- 2.5 The Company will be able to provide personal assistance to the Client from 08h30 – 17h00, Monday to Friday, to attend to any Client queries.
- 2.6 Strategy, concept and design work shall be invoiced to the Client at the rate in the Cost Estimate and the designated team allocations and/or costings for any aspect of the services shall be recorded in the Cost Estimate.
- 2.7 All specifications, dimensions and special instructions are to be provided by the Client prior to the Company commencing with any creative work. All image hire shall be invoiced separately. Whether or not any aspect of the services, is to any extent bespoke, the Client shall confirm all aspects of the services, and when satisfied, approve in writing, each and all stages and aspects of services including the use of images, logos, text, all other content, and design, and the Company shall be entitled to treat each stage and aspect of services as accurate and satisfactory once so approved by the Client. The Company will accept no liability for any error on the part of the Company or the Client, once a sample, proof or other item is so approved by the Client.
- 2.8 The Company does not accept responsibility for the quality of full colour printed works unless the Client authorises the Company to produce cromalins of such work (colour proofs produced from film separations). The production of such cromalins will be at the expense of the Client and shall be quoted separately. Any corrections made at the cromalin stage will be at the Client's sole expense.
- 2.9 At the layout stage of any services, any corrections will be invoiced by page rate as an extra item based on light, medium and heavy amendments.
- 2.10 All services will be quoted on the basis of all copies supplied by the Client on disk and all other images supplied.

- 2.11 The Company will undertake to input and/or sub-edit any written material at the request of the Client and such services will be invoiced as a separate item.
- 2.12 The Company will undertake the sourcing and/or commissioning of images at the request of the Client and it will be invoiced as a separate item.
- 2.13 The Company reserves the right to reject any images supplied by the Client if the quality of such images is sub-standard to the extent that it would produce inferior results.
- 2.14 The Company will take all reasonable care in rendering a high quality of Service but only on condition that the time allowed to the Company to do so is sufficient for all quality checking procedures to be implemented by the Company.
- 2.15 Where the Client is responsible for any design, the Company will only supply up to 2 (two) images without charge to the Client. Additional images can be supplied for an extra fee.
- 2.16 Unless dispatched at the specific request of the Client by registered postage or express post, the Company reserves the right to choose a convenient method of dispatch of any aspect of the services. Packaging costs and the costs of first class postage or such other method of dispatch as the Company shall adopt (whether or not at the request of the Client) shall be separately charged on the Invoice. The services are dispatched by, and to, the Client at the sole risk of the Client.
- 2.17 The Company will use its reasonable endeavours to comply with any preferred or other dates given or requested for delivery of the services.
- 2.18 The Company and the Client, if applicable, will prepare a schedule setting out the timeframe for delivery of the services, which shall be used as a means of determining progress in the rendering of the services. Meeting any agreed delivery date will depend on the Client furnishing to the Company the items necessary for the Company to render the services by the agreed dates. Should any services be delayed by the Client, this may affect any agreed delivery date and a new delivery date will be proposed by the Company.

### **3. Goods Supplied**

- 3.1 The Company agrees to sell the goods to the Client and the Client agrees to purchase the goods from the Company for the amount as stipulated in the Cost Estimate.
- 3.2 The Company shall, upon request from the Client, prepare a Cost Estimate for the goods to be manufactured, sourced or otherwise supplied to the Client, which Cost Estimate shall be supplied to the Client. The Client shall within 30 days accept such Cost Estimate from the Company by issuing a valid, approved, purchase order reflecting the Goods so contained in the Cost Estimate

it wishes to purchase from the Company, alternatively by notifying in writing the Company of its intention to proceed with the Cost Estimate.

- 3.3 All descriptions and specifications, drawings and particulars of weights and dimensions in a Cost Estimate shall form the basis of the specification and criteria, which the Company agrees to endeavour to provide and deliver to the Client.
- 3.4 If the Company is unable to supply the goods to the specifications required by the Client, after the issuing of the Cost Estimate by the Client, the Company shall be entitled to supply goods of a similar or comparable standard to the goods contained in the Cost Estimate.
- 3.5 The Client shall not be entitled to withhold any payment to the Company for any reason whatsoever, including but not limited to if the Company is unable to provide the goods to the exact specifications required by the Client.
- 3.6 If the Client requires the Company to install or set-up the goods, the Company shall be entitled to issue a further Cost Estimate, if such costs have not been accommodated for in the initial Cost Estimate for the goods.
- 3.7 The Company agrees that it shall endeavour to deliver the goods to the Client within the time period as contained in the Cost Estimate or at such time periods as agreed to between the Company and the Client.
- 3.8 The Goods shall be deemed to be delivered to the Client, upon dispatch to the premise or other nominated delivery address supplied by the Client, and from date such date the Client shall carry the risk on the goods.

#### **4. Payment**

- 4.1 All prices in the Cost Estimate and/or Invoice are stated exclusive of VAT which will be chargeable in addition at the applicable rate current from time to time
- 4.2 In any case where the Company advises the Client that it does not meet its credit criteria, the Order must be accompanied by the full amount so reflected in the Cost Estimate, inclusive of VAT, prior to the Company rendering any services and/or delivering any goods.
- 4.3 If all or any part of the full amount of the Invoice has not been paid by the later of, any preferred delivery date or the due date for payment of the Invoice, and the Company is ready, willing and able to deliver the services and/or goods at that date, it may, elect to recover from the Client the full unpaid balance of the Invoice before rendering any further services and/or goods.

- 4.4 Where the Client unlawfully cancels any Order or part thereof the Company may retain any payment/s previously made by the Client. Any order cancellations are subject to a 50% (fifty percent) cancellation fee of the Cost Estimate or Invoice, whichever is applicable.
- 4.5 The Client must pay any amounts due and payable, in full, as a pre-condition of the Company being obliged to carry out or deliver any (or any further) services and/or goods or to do anything else (whether before or after the preferred delivery date). It remains the discretion of the Company to waive this requirement.
- 4.6 The Company may submit an Invoice for the full VAT inclusive order value on or at any time after receipt of the Client's Order and, except for such part thereof as is required by the order to be paid sooner, the full unpaid balance of the Invoice will be payable within 35 (thirty five) days of the date of Invoice (irrespective of any preferred delivery date) date.
- 4.7 The Company shall have the right to charge interest at the rate of 2% (two percent) per month on all sums overdue calculated from the last day on which payment should have been made, as stated on the Invoice, to the date of final payment, and shall be entitled to recover all costs and expenses incurred in the recovery of such overdue accounts and which shall be due and payable on demand.
- 4.8 Ownership of all aspects of the services and/or goods (including any of the Client's goods, materials or other items with which any of the Company's goods are intermixed) shall remain or vest in the Company (as the case may be) until payment in full for the services and/or goods has been received by the Company.
- 4.9 Should the Company incur any cost, which does not appear on the Cost Estimate, in rendering of the services and/or goods, the Client shall be liable for these costs incurred by the Company and the Company reserves the right to render an additional invoice for these costs.
- 4.10 Any other request by the Client for additional services and/or goods to be rendered by the Company at the Client's special instance and request, which do not form part of a Cost Estimate/Invoice shall be invoiced separately by the Company.
- 4.11 All payments to the Company by the Client shall either be by cash or Electronic Funds Transfer. The Company shall be entitled to alter or waive this provision at its election. The Client shall provide immediately at every payment, a detailed Remittance Advice detailing which invoices and credit notes have been paid.
- 4.12 If the price or cost of any aspect of the services and/or goods increases, for whatever reason, before payment by the Client of the full Invoice amount or while the Company is still rendering the Services and/or goods, the Company reserves the right to render an additional invoice

detailing the increased amount, which amount shall be immediately due and payable by the Client.

## 5. **Other Commissions**

If the Services include the purchasing of media space on behalf of the Client, the Client agrees that the Company shall be entitled to invoice the Client for media space and time at gross rates contracted with the media, which shall form part of the Services in accordance with this Agreement. The Company will further be entitled to receive a commission of 16.5% on such gross media rates, excluding VAT. The Company shall be entitled to invoice the Client for such 16.5% media commission, and retain the full portion for its own benefit.

## 6. **Copyright**

As between the Company and the Client, all intellectual property rights, (including copyright) in any aspect of the services and/or goods (and all elements thereof) shall vest exclusively in the Company and the Company may reuse any element, concept or other aspect of the services and/or goods in its work for other clients. No right or license is to be implied to the contrary, or is assigned or granted to the Client. The foregoing shall not apply to any logo, trade mark, database or other item supplied by the Client in which the intellectual property rights are vested in the Client prior to supply of such item to the Company. Except with the prior written approval of the Company, the Client may not copy all or any part of any services and/or goods or any proof, sample or intermediate item produced in the course of any work or services and/or goods rendered by the Company, nor, except in the manner and for the purpose set out in the Cost Estimate or Invoice or otherwise agreed with the Company, may the Client use all or any part/s of completed services and/or goods. This condition shall equally apply where the Client, rather than the Company, carries out any production or other work as if it formed part of services and/or goods, and in addition in such case the Client may not, copy, or make any use of any of such work or any Company's work forming part of the services and/or goods without the written approval of the Company being first obtained.

## 7. **Warranties**

7.1 In the implementation of these terms, the parties undertake to observe the utmost good faith, and they warrant in their dealings with each other that they will not do anything, nor refrain from doing anything, which might prejudice or detract from their rights, obligations or interests.

7.2 The Client warrants that it and any of its directors and/or officers and/or employees have full capacity to enter into these terms and to act independently without the need to refer to, or seek approval from, any other party in the performance of its obligations hereunder.

7.3 The Client does hereby consent to the Company submitting its details to ITC, TransUnion or any other Credit Bureau, either as result of the Client being in default with its obligations in terms of these terms, or for any other reason whatsoever.

## 8. Legal and Domicilium and Notices

8.1 The parties consent to the jurisdiction of the Magistrate Court in terms of Section 45 of the Magistrates Court Act 34 of 1944, in the event of any legal dispute arising out of or incidental to these terms. Should the Company institute legal proceedings against the Client, the Client shall be liable for the Company's legal costs and collection commission on the scale as between Attorney and Own Client.

8.2 The parties choose their respective *domicilium citandi et executandi* for all purposes relating to these terms, including the giving of any notice, the payment of any sum, the serving of any process, as follows: (a) the Company: MMS Communications Proprietary Limited, Silverstream Office Park, 10 Muswell Road, Bryanston 2191; (b) Client: the address as it appears on the Cost Estimate.

## 9. General

9.1 Each provision of these terms is severable, and should any court or body of competent jurisdiction declare any provision of these terms to be illegal, void, invalid or unenforceable, all other provisions shall remain in full force and effect.

9.2 No addition to, variation, novation or agreed cancellation of any provision of these terms shall be binding upon the parties, unless reduced to writing and signed by or on behalf of the parties.

9.3 No indulgence or extension of time which any party may grant to any other shall constitute a waiver of or, whether by estoppel or otherwise, limit any of the existing or future rights of the grantor in terms hereof, save in the event and to the extent that the grantor has signed a written document expressly waiving or limiting such right.

9.4 Without prejudice to any other provision of these terms, any successor-in-title, including any executor, heir, liquidator, business rescue practitioner, curator or trustee, of any party shall be bound by these terms.

9.5 These terms shall in all respects (including its existence, validity, interpretation, implementation, termination and enforcement) be governed by the law of South Africa.

9.6 Neither party shall be bound by any express or implied term, representation, warranty, promise or the like not recorded in these terms.



9.7 The Company shall use all reasonable endeavours to discharge its obligations in terms of these terms in a prompt and efficient manner, it does however not accept responsibility for any failure or delay caused by circumstances beyond its control.

9.8 These terms and conditions will supersede all prior agreements, arrangements, and understandings between the parties in relation to the subject matter of any services rendered and/or goods sold and delivered and it shall apply to the exclusion of all other terms, express (written or oral), or implied by law, course of dealing, or otherwise.

## 10. **Breach**

Notwithstanding any other provision in these terms and conditions, should any party breach any of its obligations in terms hereof or if the Client is declared insolvent/liquidated, apply for business rescue, or convenes a meeting of or makes or proposes to make any arrangement or compositions with its creditors or if the Client shall do or cause to be done or permit or suffer any act or thing whereby the rights of the Company in respect of the services and/or goods may be prejudiced or put in jeopardy and persist in such breach for a period of 24 (twenty four) hours after written notice will have been given to it by the other party, then the aggrieved party shall be entitled without prejudice to any rights, which it may have in terms hereof or at law, to: (a) an order for specific performance and damages; or (b) claim damages.

## 11. **Surety**

The signatory of the Cost Estimate by his signature thereto does interpose and bind himself as surety and co-principal debtor *in solidum*, in favour of the Company for the due performance of all obligations of the Client. The signatory and the Client do hereby renounce all the benefits of the legal exceptions, cession of action, *non causa debiti*, *excussion*, division, no value received and revision of accounts, with the full force, meaning and effect whereof the signatory declares himself to be fully acquainted.

## 12. **Personal Information**

12.1 Any information and data provided by the Client to the Company and used by the Company directly or indirectly in the performance of this Agreement shall remain at all times the property of the Client. It shall be identified, clearly marked and recorded as such by the Company on all media and in all documentation.

12.2 The Client furthermore acknowledges that during the course of rendering services or delivering the goods, for and on behalf of the Client, the Client might become possessed with personal information, which personal information, subject to compliance with this Agreement, will be disclosed to the Client to be processed in accordance with the requisite permissions, consents and authority given or otherwise provided to the Company or nominated third party. The Client

shall ensure that it shall not process or otherwise utilize such personal information for any purposes other than which such personal information was provided to the Company or nominated third party and indemnify the Company against any claim in this regard.

12.3 The Company shall take all reasonable precautions to preserve the integrity and prevent any corruption or loss, damage or destruction of the Company and the Client data and information.

12.4 The Company agrees to comply and have adequate measures in place to ensure that its staff complies at all times comply with the provisions and obligations contained in Protection of Personal Information Act, 2013 (“**POPI**”). The Client furthermore undertakes that it agrees to comply with and have adequate measures in place to ensure that it and its staff complies at all times with the provisions and obligations contained in POPI and indemnify the Company in respect of any claim in this regard.

12.5 All personal data acquired by the Company from the Client shall only be used for the purposes of rendering the services and/or produce the goods and shall not be further processed or disclosed without the written consent of the Client and third parties who have provided their personal information. The Client shall ensure that any personal information it has collected and/or instructed the Company to process has been so validly collected in accordance with POPI and that it has acquired the requisite permissions from the data subjects to process their personal information in accordance with POPI.

### 13. **Indemnification**

In the event of any third party making any claim against the Company for any loss or damage, whether direct, indirect, consequential or otherwise, arising from any cause in connection with these terms (including without limitation, any cause in connection with anything done or not done pursuant to these terms), whether such loss or damage results from breach of contract (whether material, fundamental or otherwise), delictual, negligence or any other cause without limitation, and whether these terms is cancelled or not, the Client hereby indemnifies the Company against any such claim, unless it is finally determined that the loss or damage was caused by fraud or willful misconduct on the part of the Company or any of its employees or agents.