

TERMS AND CONDITIONS

The Parties hereby agree that the following general terms apply to the provision of the Services, the scope of which is set out in the Cost Estimate.

1. DEFINITIONS

"Copyright Works" means all intellectual property rights in all design and advertising material created by Canvas in connection with the provision of the Services which are either currently in existence as at the Effective Date or created at any further stage of which any member or employee of Canvas is the author or joint author and which work is eligible for copyright in terms of the Copyright Act 98 of 1978;

"Cost Estimate" means a quotation of the fees and charges applicable and payable by the Client to Canvas in respect of Services rendered in connection with any Job or any part thereof and charged in accordance with the provisions of these Terms and Conditions;

"Electronic Communication" bears the meaning ascribed thereto in section 1 of the Electronic Communications and Transactions Act 25 of 2002;

"Hourly Rates" means Canvas's current rates charged per hour;

"Invoices" means tax invoices issued by Canvas to the Client in respect of each Cost Estimate;

"Media" means all and any means available in the Republic of South Africa or internationally for the dissemination of advertising material including, but not limited to, television, radio, newspapers, direct mailing, magazines, signs, film production, video tapes, internet and any other means of communication to the general public;

"Job" means any specific request by the Client for the provision of the Services by Canvas in relation to a particular Job;

"Services" means the provision by Canvas of advertising, direct and relationship marketing, sales promotion, Media planning and buying, inter-active technology and design and any services related thereto;

"Terms and Conditions" means these standard terms and conditions which apply to each Cost Estimate sent by Canvas to the Client;

"writing" means legible writing in English and includes printing, typewriting, lithography, use of electronic mail or any other mechanical process, as well as any electronic communication as contemplated in the Electronic Communications Act, and **"written"** shall have a corresponding meaning;

2. BINDING NATURE

Where these Terms and Conditions refer to the Client approving anything in writing, the Client shall fulfil this obligation by any written means whatsoever including, without limitation, communicating such approval by way of electronic mail. Any representative of the Client purporting to have authority to bind the Client via a response in any electronic format shall be deemed to have such authority, irrespective of whether or not such authority is held and any such action taken on behalf of the Client shall be binding on the Client.

3. CHARGES

3.1 All charges levied by Canvas will be set out in the Cost Estimate to be approved in writing by the Client prior to commencement of a Job.

3.2 Canvas's Hourly Rates shall be increased annually at its sole discretion.

4. APPROVALS

4.1 Canvas shall not commence with the execution or publication of any advertising or design idea, plan, programme or campaign relating to copy, layout, artwork, proofs, radio and television commercials and scripts or any other material Canvas proposes to use (the **"Material"**) without the Client's prior written consent of the Cost Estimate relating to the Material.

4.2 Provision by the Client of its written approval of the Material and Cost Estimate referred to above shall constitute its authority for Canvas to prepare proofs and no further consent or approval shall be required by Canvas.

4.3 Provision by the Client of its written approval of proofs of the Material will constitute its authority for Canvas to publish the Material.

4.4 Written agreement by the Client of radio scripts and television and film shooting scripts and Cost Estimates will constitute authority for Canvas to audition, appoint and contract with third parties for production.

4.5 Canvas may not, without the prior written approval of the Client incur production or other costs which exceeds the approved Cost Estimates in relation to any Job by more than 10% (ten percent) irrespective of whether or not the increased costs are as a result of change to the scope of the Job.

5. CANVAS' RIGHTS AND OBLIGATIONS

- 5.1 Canvas shall, in its sole discretion, be entitled to appoint any third parties to provide or perform any part of the Services.
- 5.2 In the event that the Client nominates or appoints any third parties to work with Canvas in connection with any part of the Job the Client shall be solely responsible for any breach or act or omission by such third parties in respect of the provision of their services and Canvas shall have the right to withdraw its co-operation to work with such third parties if it believes that the performance or actions of such third parties shall be prejudicial to or prevent Canvas from timeously and properly performing the Services.
- 5.3 Canvas shall not commence work on any Job until it receives written approval by the Client of the Cost Estimate, following which Canvas shall issue the Client with an invoice.
- 5.4 Canvas shall be permitted to use the Material on its website, social media platforms and credentials for the purposes of marketing its services.
- 5.5 All amounts due by the Client to Canvas and not settled per the terms of the Invoice shall attract interest at the prime rate of interest of ABSA Bank Limited plus 2.5% per annum, calculated daily and compounded monthly in arrears.

6. INDEMNITY

- 6.1 The Client hereby indemnifies Canvas against any damages or loss and any expenses, claims or costs incurred or suffered by Canvas or the Client in connection with:
- 6.1.1 claims of intellectual property rights infringements arising out of Canvas's adherence to the Client instructions or where the legal proceedings are based upon any representation or misrepresentation or on any information, knowledge or material whatsoever obtained from the Client and used by Canvas in good faith; and/or
- 6.1.2 any action of any kind whatsoever against Canvas in respect of any legal proceedings against the Client arising out of the provision of the Services.
- 6.2 The Client further indemnifies Canvas against any loss suffered by either the Client or by Canvas as a result of:
- 6.2.1 failure by the Client to check and approve in writing all Materials submitted by Canvas prior to publication, the responsibility for any errors in respect of which shall rest on the Client;
- 6.2.2 infringement of any copyright, trademarks or any other intellectual property rights of which the Client ought reasonably to be aware which may occur from the publication of any Materials, Copyright Works or Third Party Works (as defined in clause 7.3 below);
- 6.2.3 other than in instances of gross negligence, Canvas failing to adhere to any time schedule agreed with the Client; and
- 6.2.4 any errors, misrepresentations, intellectual property infringements or any other causes of loss, damages or claims howsoever arising from or in the Materials on publication, following the Client's approval of any Materials, whether such approval is given in writing or not.

7. INTELLECTUAL PROPERTY

- 7.1 Subject to the provisions of clause 7.2 below, Canvas hereby cedes in favour of the Client, by way of an "out-and-out" cession, all right, title and interest in and to the Copyright Works (the "Cession").
- 7.2 The Cession is conditional upon and shall only become effective upon receipt by Canvas of all monies owed to Canvas by the Client in respect of provision of the Services the payment of which shall constitute a fair and reasonable consideration for the Cession.
- 7.3 The Client hereby agrees that, notwithstanding the above, the Client shall approve and be responsible for:
- 7.3.1 the final content of any Materials, Copyright Works or any copyright and other intellectual property rights in any design and advertising materials which are commissioned by Canvas from any third parties in connection with provision of the Services (the "Third Party Works"); and
- 7.3.2 the content of any cession agreement in respect of any Third Party Works and in particular that the cessionary in respect thereof is the legal owner of such rights and that the Third Party Works are the original work of such third party.

8. PROTECTION OF PERSONAL INFORMATION ACT 4 OF 2013 ("POPIA")

- 8.1 In provision of the Services by Canvas to the Client (the "data subject"), Canvas (an "operator") processes the data subject's personal information as contemplated in POPIA.
- 8.2 POPIA requires Canvas to handle the Client's personal information in the manner contemplated in POPIA.
- 8.3 Canvas shall, in provision of the Services, comply with all of its obligations relating to personal information that apply to it as an operator under any applicable data protection laws, including, without limitation, POPIA.
- 8.4 Canvas shall only process personal information for the purposes of fulfilling its obligations in providing the Services and only as required from time to time.
The terms "operator", "data subject", "personal information" and "processing" shall have the same meanings ascribed to them under POPIA.