



Terms and Conditions



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1. DEFINITIONS

In these Terms and Conditions, the following terms shall have the following meanings:

“Charges”:	the charges payable by the Client for the Services as specified in the Contract or, if not specified in the Contract, as set out in the Quotation.
“Client”:	the company or other entity which has entered into a Contract with Two Fishes Design for the provision of Services
“Client Materials”:	documentation, reference material and other material that the Client provides to Two Fishes Design in order for Two Fishes Design to be able to provide, or otherwise in connection with, the Services.
“Contract”:	has the meaning given to it in clause 2.2.
“Expenses”:	the third party costs and expenses as are specified in a Contract, or which are reasonably and necessarily incurred by Two Fishes Design in connection with the Services (including, without limitation, travel and subsistence expenses, and courier fees).
“Order”:	an order from the Client for the provision of Services, which may be in such form and medium as Two Fishes Design may from time to time accept.
“Price List”:	the price list agreed by Two Fishes Design and the Client for the Services or, if no such price list has been agreed, Two Fishes Design’s then standard price list.
“Two Fishes Design” (hereafter referred to as TFD):	whose registered office is at 11 Leeuwenhof Street, Oakglen, Bellville, 7530, South Africa. Two Fishes Design CC 2006/025841/23.

2. QUOTATIONS AND CONTRACTS

- 2.1 Unless stated otherwise each written quotation issued by TFD remains open for acceptance for 30 days.
- 2.2 The Client’s written approval or payment of the said deposit is acceptance of a quotation and constitutes an Order which is subject to acceptance by TFD in accordance with clause 2.3. By payment of the deposit or signed written agreement the Client acknowledges and agrees to these here Terms and Conditions.
- 2.3 A contract between TFD and the Client for the provision of Services is formed on the acceptance by TFD of an Order (a “Contract”). Each Contract incorporates these Terms and Conditions, the Client Materials, and any document(s) expressly referred to herein or in the Order. A Contract may only be modified in writing by duly authorized representatives of TFD and the Client. Any standard or pre-printed terms and conditions contained on the Client’s purchase order, invoice or other document shall have no effect and shall not apply to the Contract.
- 2.4 Each Contract constitutes the entire agreement between the parties with respect to the provision of Services, provided that nothing in this clause shall limit or exclude the liability of either party for fraud or fraudulent misrepresentation.



3. SERVICES

- 3.1 Subject to the following provisions of this clause 3, TFD undertakes that:
- (a) it will exercise reasonable skill, care and diligence in carrying out the Services; and
 - (b) it will use all reasonable endeavours to meet any date(s) for completion of the Services specified in a Contract, provided that TFD shall not be liable for any delay caused by the Client (including, without limitation, any failure or delay by the Client to provide any Client Materials, or any errors or omissions in the Client Materials).
- 3.2 Unless another method is specified in a Contract, TFD will send all work to the Client by email at the Client's sole risk.
- 3.3 The Client shall ensure that all Client Materials:
- (a) are of a sufficient quality and integrity to enable TFD to provide the Services;
 - (b) do not infringe any third party's copyright or other intellectual property rights;
 - (c) are not defamatory or otherwise libellous; and
 - (d) do not breach any other law, statute, ordinance or regulation.
- The Client agrees to indemnify TFD against any loss, liability, damage, cost and expense (including reasonable legal fees and expenses) incurred by TFD in connection with claims made or brought against TFD by a third party alleging that the Client Materials, or the use thereof by TFD (i) infringe the copyright or other intellectual property rights of any person, or (ii) are defamatory or otherwise libellous.
- 3.5 All Client Materials provided to TFD by the Client will be held or dealt with by the Company at the Client's risk, and the Client is solely responsible for ensuring that such Client Materials are insured against loss or damage while in TFD custody. TFD reserves the right to destroy or otherwise dispose of any Client Materials which have been in TFD custody for more than three months following completion of the Services to which they relate.

4. PRICES AND PAYMENT

- 4.1 TFD shall invoice the Client for a deposit of 50% of total quotation. This deposit is non-refundable.
- 4.2 TFD shall invoice the Client for the remainder of the Charges and any Expenses (together with VAT at the then applicable rate) on completion of the Services, provided that, where Services take {or are reasonably expected to take} more than 30 days to complete, TFD shall be entitled to issue interim invoices.
- 4.3 Unless other payment terms are specified in a Contract, the Client shall pay each invoice issued by TFD on receipt of the invoice. If the Client requests that TFD invoices a third party in respect of any Services and such third party fails to pay the invoice by the due date, TFD is entitled to reissue the invoice to the Client and the Client shall pay such invoice in full on receipt.
- 4.4 For the avoidance of doubt, the Client is not entitled to delay payment of an invoice issued by TFD as a result of any failure or delay in payment by the Client's own client or customer, even where the Client has notified TFD that the Services are being provided for the benefit of such client or customer.



- 4.5 In the event of a bona fide dispute, the Client shall pay the disputed invoice (or, if applicable, the disputed part of the invoice) within 7 days of the dispute being resolved in TFD's favour.
- 4.6 If the Client fails to pay an undisputed and overdue invoice within 30 days of receiving a written notice from TFD, then TFD reserves the right:
- (a) to suspend or terminate some or all services to the client including the services of webhosting and any other outsourced service rendered to the client.
 - (b) to charge interest at the rate of 2% per month on the outstanding balance from the due date up to the actual date of payment on all unpaid invoices.
 - (c) After 60 days of non-payment of said invoice the account will be handed over for debt collection, the client will be liable for all consequential debt collection and or legal fees

5. CONFIDENTIALITY

TFD will keep information and documentation entrusted to it confidential, apart from information which TFD knew prior to its engagement by the Client without any obligation of confidentiality, or information which enters the public domain other than through the fault of TFD, or where TFD is required to disclose such information as a result of a binding order from an authority of competent jurisdiction.

6. DATA PROTECTION

- 6.1 TFD will at all times adhere to the protection of personal information act 2013:
<http://www.justice.gov.za/inforeg/docs/InfoRegSA-POPIA-act2013-004.pdf>
- 6.2 The parties acknowledge that the provision of the Services may require processing of personal data on behalf of the Client by TFD.
- 6.3 TFD undertakes that in relation to any personal data that it processes on behalf of the Client it shall process such personal data only in accordance with the protection of personal information act 2013.

7. NON-SOLICITATION

The Client agrees that it will not, at any time prior to the date falling twelve (12) months after the date of completion of the Services, solicit, directly or indirectly, the services of any employee or former employee of TFD or of any subcontractor of TFD who has at any time been involved with the provision of Services.

8. CANCELLATION AND POSTPONEMENT

- 8.1 If the Client notifies TFD that it wishes, for any reason, to postpone or cancel any Services, TFD may (at its discretion) agree to such postponement or cancellation, subject always to the Client paying all Charges which have accrued and all Expenses that have been incurred up to the date of cancellation or postponement (as applicable).
- 8.2 TFD shall be entitled to terminate a Contract with immediate effect and without liability if it reasonably believes that the Client is or may be in breach of clause 3.4.



9. LIABILITY

TFD shall not be liable, whether in negligence, for breach of contract, misrepresentation or otherwise, for any indirect or consequential loss, damage, expense or cost of any kind suffered or incurred by the Client.

10. DISPUTE RESOLUTION

TFD and the Client agree that any disagreements about the quality of the Services shall be referred to an arbitrator to be agreed and appointed by the parties or, if the parties fail to agree, to approach the courts of the Republic of South Africa.

11. FORCE MAJEURE

In the event of natural or unnatural disasters (which shall include strike, fire, industrial dispute, civil commotion, natural disaster, acts of war and any other situation which can be shown to have materially affected Two Fishes Design ability to undertake and complete the Services as agreed), TFD shall notify the Client as soon as it becomes aware of such event, indicating the circumstances. An event of natural or unnatural disaster shall entitle either TFD or the Client to terminate the Contract with immediate effect, subject to the Client paying TFD for all Services completed and Expenses incurred up to the date of termination. TFD shall not be liable for the consequences of non-performance or any delay in completion or delivery of Services as a result of natural or unnatural disasters.

12. ASSIGNMENT AND SUBCONTRACTING

- 12.1 Neither party shall assign its rights or obligations under a Contract without the prior written consent of the other party.
- 12.2 TFD is entitled to subcontract some or all of the Services, provided that TFD shall remain solely responsible for the acts and omissions of its subcontractors.

13. WAIVER

The waiver by either party of a breach or default of any of the provisions of a Contract by the other party shall not be construed as a waiver of any succeeding breach of the same or other provisions, nor shall any delay or omission on the part of either party to exercise or avail itself of any right, power or privilege that it has or may have hereunder operate as a waiver of any breach or default by the other party.

14. JURISDICTION

Each Contract is governed by the Law of the Republic of South Africa and TFD and the Client irrevocably submit to the nonexclusive jurisdiction of the Law of the Republic of South Africa and its Courts, provided that nothing in this clause shall prevent TFD from taking legal action against the Client in any jurisdiction in which the Client carries on business.