

## TERMS, CONDITIONS AND SERVICE LEVEL AGREEMENT OF NICO GROBLER DESIGN & ADVERTISING (NGD&A) AND ASSOCIATES

### Prelude:

Agreement and terms and conditions between readers and users of the website and Clients's of NGD&A, whether in person or by contract to third party as the relationship may dictate at the time.

It is hereby agreed that the users and Clients's of NGD&A (herein after referred to as "the parties") will read the terms and conditions into all quotations, work done, third party relationships and Client and NGD&A relationship in general.

### Definitions:

- I. **Artwork** shall mean any sample, specimen, sketch, design, layout, photograph, slide any proof, pull or other work designed, created or altered by NGD&A or on which NGD&A applied its creative ideas or invested its intellectual design ability whether such artwork was in existence or altered. Collectively all and any work may resort under the term "design".
- II. **Day** shall mean work days from Monday to Friday.
- III. **Products** shall mean the products agreed upon and quoted for and shall include all artwork and reproductions thereof.
- IV. **Design** shall mean any concept or draft artwork.

### Deposits:

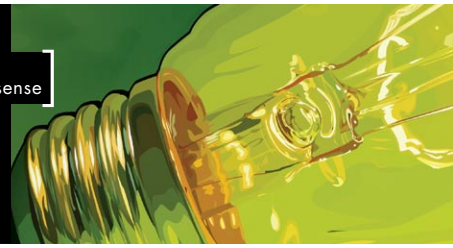
- i. Deposits of 60% (Fifty percent) of the total quotation shall be paid on acceptance of this quotation.
- ii. NGD&A reserves the right to claim additional payments from CNG on written notice to cover expenses such as the cost of printing, copying and the like within the instruction of CNG.
- iii. Quotations will be valid for 30 (thirty) days from the date of the quotation only.

### Initial designs

- i. Approval of designs will be done when The Client is furnished with proofs of the designs. The Client shall approve the designs by affixing his signature to the proof thus indicating that he accepts the designs and shall return the designs to NGD&A.
- ii. After approval of the design by The Client, The Client shall have no claim against NGD&A for errors on the signed design.
- iii. If The Client wishes to amend the design or artwork for other reasons than errors made by the printer and/or designer, The Client shall be held liable for the cost thereof.
- iv. NGD&A shall not be held liable for any damage or loss suffered if The Client's instructions were to proceed without the submission of the design.

### Release

- i. The Client shall collect the products from NGD&A and The Client shall not refuse or delay the collection of the products. If The Client fails to collect the products within 10 (ten) days after NGD&A informed The Client to collect, The Client shall bear storage cost from the first day that the products were available for collection at a rate of R185.00 per day, which must be paid by The Client to NGD&A on demand.



## GRAPHIC DESIGN • WEB • MULTIMEDIA • PHOTOGRAPHY

- ii. On receipt of the products it shall be deemed that The Client inspected the products and the products are in good order if The Client or his representative accepts the products.
- iii. No products shall be returned to NGD&A after the delivery date without the written consent of NGD&A.
- iv. The products shall be delivered to The Client if The Client so desires, provided that The Client shall bear the cost of the delivery and indemnifies NGD&A from any loss incurred during the transportation of the products.

### Remuneration

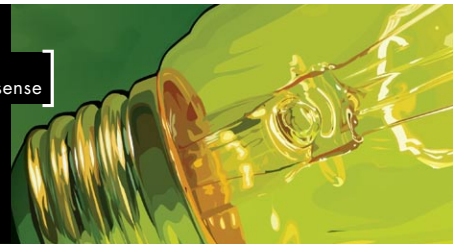
- i. Payment of the outstanding balance shall be effected by cash on delivery (COD) unless the parties have agreed otherwise in writing.
- ii. Any amount not paid by The Client on the due date, shall bear interest at a rate equal to 15,5% (Fifteen comma five percent) from the due date being date of demand to date of final payment.

### Intellectual Property

- I. Ownership in the intellectual property of the artwork and/or products remains vested in NGD&A. Copyright of all artwork designs and/or concepts are reserved by NGD&A.
- II. NGD&A reserves the right to use the artwork or products for portfolio purposes.
- III. Materials, files and computer files used in the creation of the final artwork or products shall remain the property of NGD&A.
- IV. No person shall be authorised to use any product or artwork or any of the products if the full outstanding amount has not been paid.
- V. Where The Client requires the ownership of the intellectual property, the parties shall negotiate a price for the intellectual property and the right title and interest to the intellectual property shall only be assigned or transferred to The Client as soon as:
  - written assignment agreement for the transfer of the intellectual property has been drafted and signed by both parties, the cost of which will be for the account of The Client;
  - the full contract price inclusive of all disbursements is paid by The Client and verified by NGD&A.

### Cancellation

- I. NGD&A reserves its rights to cancel the project at any time without prejudice to its rights if The Client fails to pay any amount due or perform any other act contra to the agreement between the parties whether in writing or verbal.
- II. Upon cancellation all amounts owed to NGD&A by The Client becomes due and payable immediately and NGD&A may take possession of and retain any items of The Client that are under the control of NGD&A and without prejudice to any of NGD&A's other rights to retain such products until payment has been effected.
- III. Every quotation is subject to the cancellation by NGD&A due to force majeure / vis major / casus fortuitus on the part of NGD&A including (without restricting this clause to these instances) inability to secure labour, electricity, materials or supplies, civil disturbance, riot, state of emergency, strike, labour disputes, fire or flood.
- IV. Every quotation is subject to the cancellation by NGD&A if The Client breaches any terms of this agreement or makes any attempt of compromise, liquidation, sequestration, termination or if judgement is recorded against The Client or any of its principals.
- V. If The Client rejects a design or cancels the agreement before or on the date of the submission of the design, The Client shall forfeit the deposit and shall be liable for any additional labour and expenses incurred by NGD&A to date of cancellation.



## GRAPHIC DESIGN • WEB • MULTIMEDIA • PHOTOGRAPHY

VI. If The Client cancels the agreement after date of submission of the design, The Client shall be held liable for the full outstanding amount together with any other cost incurred in the collection thereof.

### Costs not initially quoted for

If The Client requires any additional work to be performed by NGD&A, which costs are not set out in the quotation, The Client shall be invoiced therefore accordingly.

### Indemnification

- I. The Client indemnifies NGD&A against the following or any consequential damages flowing from:
  - a. Any claims, costs and/or expenses of whatsoever nature arising out of any legal action against The Client for services rendered, artwork created and products sold and delivered by NGD&A to The Client;
  - b. Any loss of The Client's design and/or materials submitted to NGD&A;
  - c. The missing of project deadlines which shall include penalties imposed upon The Client;
  - d. Loss of information if the information was stored at NGD&A.

### Breach of Contract

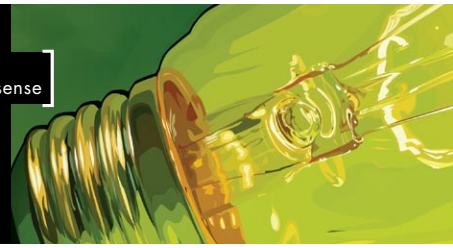
- II. Where any party commits a breach of the terms and conditions, the aggrieved party shall deliver a notice on the defaulting party at the defaulting party's given address, requiring the defaulting party to remedy the breach within a period of fourteen days from date of receipt of the notice. If the defaulting party fails to remedy the breach within the period of ten days, the aggrieved party may cancel the agreement and claim damages or claim specific performance or take any other legal action against the defaulting party.
- III. Should The Client commit any breach, the total amount outstanding on the account (as quoted) will immediately become due and payable notwithstanding the fact that the portion of the amount would not be owed in accordance with the agreed terms.
- IV. In the event of NGD&A instructing its attorneys to take legal action in terms of this agreement, all legal fees as between attorney and The Client, charges and tracing agent fees, shall be borne by the Client.
- V. All payments received shall firstly be allocated towards attorney fees, other charges, interest and thereafter capital.

### Jurisdiction and Locus Standi

- I. The Client hereby consents to the jurisdiction of the Magistrate's Court in respect of all legal proceedings NGD&A connected with this agreement, notwithstanding that the value of the matter in dispute might exceed the jurisdiction of the Magistrate's Court.
- II. Notwithstanding the above, NGD&A will be entitled to institute action in the High Court having jurisdiction.
- III. Should NGD&A so choose to use Arbitration as a forum, The Client hereby consents to any official forum of arbitration pointed out by NGD&A.

### Domicillium Address

- I. For all purposes under this agreement including the giving of any notice, the service of any proceedings NGD&A and for all other purposes arising from this agreement, The Client hereby chooses its domicilium citandi et executandi at the chosen address of The Client stipulated on the face of the quotation.



## GRAPHIC DESIGN • WEB • MULTIMEDIA • PHOTOGRAPHY

- II. Any party may by notice to the other party change its domicilium citandi et executandi to another physical address and/or fax number in the Republic of South Africa, provided that such change shall become effective only on the 7th day after receipt of the notice.
- III. Notwithstanding anything to the contrary herein contained, the written notice or communication actually received by a party shall be an adequate written notice or communication, notwithstanding that it was not sent to or delivered at the chosen domicilium citandi et executandi.

### Waver

No indulgence, latitude, extension of time or omission by NGD&A shall constitute a waiver by NGD&A of any of its rights under this agreement and shall not amount in an appropriate instance, to a condonation by NGD&A of any act or omission on the part of The Client as such and The Client's conduct shall under no circumstances whatsoever give rise to a defence of estoppel. The acceptance by NGD&A of any payment by The Client after cancellation of this agreement shall not be deemed to be a waiver of NGD&A's rights or a novation.

### Entire Agreement

The parties agree that this agreement is the entire agreement between them. No variation thereof or waiver of any rights, obligations or consensual cancellation hereof shall be of force or effect unless reduced to writing and signed by both parties.

### Incorporation

Terms and conditions referred to in this document will be applicable to the relationship between NGD&A and The Client in whatsoever other capacity the parties may here and after relate to each other, with the understanding that the principles laid down in this agreement will as a rule, unless pertinently stated otherwise, supersede all other agreements and relationships between the parties, with special reference to quotations and invoices and the burden of proof will in all instances be on The Client and not on NGD&A.