

Terms and Conditions of Service

1. General

All services supplied by Demographica (Pty) Limited, registration number 2007/010737/07 ("Demographica") shall be made and supplied on the following terms and conditions read with Demographica's privacy policy, situated at www.demographica.co.za (Privacy Policy). These terms and Privacy Policy shall take precedence over any other terms and conditions, which may be contained in the Client's acceptance of order, or other client documentation, and may only be altered with the express written agreement of Demographica. Any conflicting statements in any acceptance of order or other documentation issued by the Client shall be null and void, unless Demographica has expressly agreed to, such special terms in writing.

2. Interpretation

- 2.1. Unless inconsistent with the context, the expressions set forth below shall bear the following meanings:
- 2.2. "Client" means the Party engaging with Demographica on any matter including for the purposes of receiving services from Demographica;
- 2.3. "Demographica's Associates" means Demographica's officers, servants, agents or contractors or other persons in respect of whose actions Demographica may be held to be vicariously liable;
- 2.4. "Parties" means Demographica and the Client;
- 2.5. "Scope of Work/ Cost Estimate" means any cost estimate, quotation, document, proposal or correspondence from Demographica to the Client describing the Services proposed or actually rendered by Demographica to the Client;
- 2.6. "Services" means full service specialist advertising services, including but not limited to B2B advertising, Niche market advertising, anthropology, strategy, design, advertising and brand partnerships.

3. Appointment and Duration

- 3.1. These terms and conditions commence at the point of contact between Demographica and the Client shall govern all interaction between the Parties and shall continue until terminated by either Party in accordance with these terms.
- 3.2. Clauses 6, 7 and 8 as well as such other clauses which are intended to survive termination as set out below, shall survive termination of these terms for any reason.

4. The Services

- 4.1. Demographica offers full service specialist advertising services for B2B and Niche Markets.
- 4.2. The Parties expressly record that each instance of the Services constitutes a separate and distinct service, and nothing set out under these terms shall be construed as obliging Demographica to render all such Services as a single, indivisible service.



- 4.3. Certain portions of the Services may incorporate the use of third party websites and/or services such as Facebook and Twitter. In this regard the Client acknowledges that Demographica does not render legal and contract advisory services and that the Client shall remain solely responsible for familiarising itself with and complying, as well as ensuring compliance, with the terms and conditions governing the use of those third party websites and/or services.
- 4.4. As at the commencement of these terms, certain software forming the platform or a component of the Services may be owned by and/or provided to Demographica by third party service providers (the "Service Provider/s").
- 4.5. Demographica shall be entitled at any time and from time to time to change the identity of any such Service Providers.
- 4.6. The Client acknowledges that the Service Providers' terms and conditions of service shall govern the use of such platform or component as between Demographica and such Service Provider. The Parties further record and agree that Demographica shall, at anytime during the term, be entitled to appoint and/or terminate the services of such Service Providers.

5. Fees

- 5.1. The Client shall, as consideration for the Services rendered or to be rendered by Demographica under these terms, effect payment to Demographica of the fees set out in the relevant invoice.
- 5.2. The Client shall pay the fees to Demographica, in the amounts stated in Demographica's interim and final invoices issued to the Client from time to time, within 30 days of the relevant invoice's date.
- 5.3. Unless otherwise agreed in writing, the fees shall escalate at a rate of 10% per annum on the 1st of March of every year.
- 5.4. In the event of the Client failing to timeously effect payment of any amount due to Demographica under these terms, Demographica shall be entitled to suspend the provision of the Services for any period in which any payment remains outstanding and further shall be entitled to charge interest thereon at a rate of 2% per month.
- 5.5. The Client agrees that it shall pay all Demographica's expenses in recovering any amounts the Client owes Demographica, including legal costs on the attorney and client scale, collection charges and tracing fees, and VAT thereon.

6. Prohibition On Solicitation Or Interference

- 6.1. The Client shall not solicit, offer work to, or contract with, whether as a partner, employee or independent contractor, directly or indirectly, any of Demographica's personnel, during the provision of the Services or during the 12 (twelve) months thereafter.
- 6.2. The Client shall not, for the duration of its relationship with Demographica and for a period of 12 (twelve) months thereafter, furnish any information or advice to anyone which results in any staff member or any representative, agent or other client of Demographica to terminate his/her employment with Demographica and/or any other contractual relationship and/or becoming employed by, or directly or indirectly interested in any manner in, any concern which carries on business, directly or indirectly, in competition with any part, aspect or facet of the business conducted by Demographica.

- 6.3. In the event of a breach of clauses 6.1 and/or 6.2 above then the Client shall pay Demographica liquidated damages in the sum of 100% of the said personnel's annual cost to company and/or 100% of the annual contract sum of any such client so lost.
- 6.4. Should any provisions of this clause or part thereof be found by any competent court to be defective or unenforceable for any reason whatever, the remaining provisions of this clause shall continue to be of full force and effect.

7. Liability

- 7.1. To the fullest extent permissible by law, Demographica disclaims all warranties of any kind, whether express or implied in respect of the Services and the Client utilises the Services at its own risk.
- 7.2. The Client agrees that Demographica is unable to, and is not required to guarantee a particular result or set of results.
- 7.3. The Client agrees that neither Demographica nor Demographica's Associates shall be liable in respect of any loss, damage or damages however arising and whatever the cause, in particular pursuant to and in furtherance of these terms.
- 7.4. In the event that Demographica is found to be liable to the Client for a particular act or omission then Demographica's liability to the Client pursuant to the provisions of these terms shall furthermore be limited to the total amount of the fees charged and paid by the Client in the year in which the liability arose.

8. Indemnity

- 8.1. The Client hereby indemnifies Demographica and Demographica's Associates from any loss, damage, damages, liability, claim, expenses, costs orders or demand which may arise as a result of the Client's unlawful conduct, willful misconduct and/or gross negligence.
- 8.2. The Client indemnifies and shall keep Demographica indemnified against any claim for infringement of intellectual property rights in connection with any information supplied by the Client to Demographica and against any and all costs, expenses and damages which Demographica may incur or become liable for as a result of such infringement.
- 8.3. Demographica shall give the Client prompt notice in writing of any claim being made or action threatened or brought against Demographica and will permit the Client, at the Client's own expense, to conduct any litigation that may ensue and all negotiations for a settlement of the claim.
- 8.4. The Client accepts and understands that it is required to approve all works prior to publication or printing. The Client indemnifies Demographica against any and all costs, expenses and damages of any works that it has approved which subsequently may not be correct or not to the Client's standards.

9. Confidentiality

- 9.1. Subject to clause 9.2, both Parties shall at all times treat all information in connection with and/or relating to the other Party, its business and all matters incidental thereto and which was if in writing, marked 'confidential' or similarly; and/or if disclosed orally, was confirmed at the time of such disclosure as constituting confidential information and was confirmed in writing within 14 days as constituting confidential information, ("the Confidential Information"), as strictly confidential and shall not, without the prior written consent of the

other Party (which consent may, for the avoidance of doubt, be withheld in the unfettered discretion of such other Party) disclose such Confidential Information to any Party, and/or make use of such Confidential Information for any purposes other than in connection with the rendering of the Services.

- 9.2. Each Party may disclose Confidential Information to its officers, employees and sub contractors but only to the extent required for the purposes of the rendering of the Services pursuant to the provisions hereof. Each Party shall inform any officer, employee or sub contractor to whom it provides Confidential Information, that such information is confidential and shall instruct them to keep it confidential and not to disclose it to any third party (other than those persons to whom it has already been disclosed in accordance with the terms of this Agreement), on the basis that the disclosing Party is responsible for any disclosure, in breach of this 9.2, by the person to whom it is disclosed.
- 9.3. Notwithstanding the stipulations of clause 9.1, Confidential Information shall not include, and the provisions of clause 9.1 shall not apply to a Party in connection with, any information which:
 - 9.4. Is or becomes generally available to the public other than as a result of disclosure by such Party in violation of this clause 9;
 - 9.5. Is or was independently developed by such Party or on its behalf by persons having no access to such information;
 - 9.6. Was in such Party's possession before such information was disclosed to it in terms of and/or pursuant to this Agreement;
 - 9.7. Is required to be given, made or published by law or under the rules and regulations of any relevant Stock Exchange or any applicable regulatory authority, in which case, the Party liable to so give, make or publish same shall give the other Party reasonable written notice thereof, along with drafts or copies thereof, as soon as is reasonably practicable, and, in the case of any disclosure required in terms of the Promotion of Access to Information Act, 2000 (Act No. 2 of 2000) (as amended) ("the PAI Act"), the Party liable to make such disclosure shall, insofar as it shall be able, apply the principles of Chapter 4 of the PAI Act in order to avoid and/or limit the extent of any such disclosure; and
 - 9.8. Is required to be disclosed, by either Party, to any provider of finance ("the Bank") in order for the Bank to take informed decisions regarding that Party, provided that such Party shall use its reasonable endeavours to procure that the Bank shall keep such information confidential.

10. Termination

- 10.1. The Client may terminate these terms, or any particular Service provided hereunder, upon giving Demographica **6 (six) months** written notice of the intended cancellation.
- 10.2. The Client shall pay Demographica for all work-in-progress, Services already performed, and expenses incurred by Demographica up to and including the effective date of the termination of these terms.
- 10.3. Demographica reserves the right to charge a cancellation fee to cover costs incurred by Demographica in preparing itself to render the Services to the Client, such fee shall include actual costs incurred, loss of opportunity and loss of revenue due to early termination.
- 10.4. Demographica is entitled to withhold all Intellectual Property and other material developed for and on behalf of the Client by Demographica until such time as payment in full, has been received by Demographica.



11. Force Majeure

- 11.1. If either Party is prevented or restricted directly or indirectly from carrying out all or any of its obligations under these terms by reason of strike, lock-out, fire, explosion, floods, riot, war, accident, act of God, embargo, legislation, shortage of or a breakdown in transportation facilities, civil commotion, unrest or disturbances, cessation of labour, government interference or control, or any other cause or contingency beyond the control of that Party, the Party so affected shall be relieved of its obligations hereunder during the period that such event and its consequences continue but only to the extent so prevented and shall not be liable for any delay or failure in the performance of any obligations hereunder or loss or damages either general, special or consequential which the other Party may suffer due to or resulting from such delay or failure, provided always that written notice shall forthwith be given of any such inability to perform by the affected Party.
- 11.2. Any Party invoking force majeure shall, upon termination of such event giving rise thereto, forthwith give written notice thereof to the other Party. Should such force majeure continue for a period of more than 90 days then the Party who shall not have invoked the force majeure shall be entitled forthwith to cancel these terms in respect of any obligations still to be performed hereunder.

12. Assignment

Save as expressly stated to the contrary herein, the Client shall not be entitled to cede, delegate, assign or otherwise transfer all or any of its rights, interests or obligations under these terms, except with the prior written consent of Demographica.

13. Breach

- 13.1. The Client shall be entitled to terminate these terms forthwith by written notice to Demographica to that effect if the Services continue to exhibit defects, notwithstanding notification of such to Demographica and notwithstanding Demographica's remedial efforts, over a continuous period of 4 (four) consecutive months or more.
- 13.2. Subject to any other provision of these terms providing for the remedy of any breach of any provision hereof, should the Client commit a breach of any provision of these terms and fail to remedy such breach within fourteen days of receiving written notice from Demographica requiring the Client to do so, then Demographica shall be entitled, without prejudice to its other rights in law to -
- 13.2.1.1. Cancel these terms, provided the breach in question is a material breach going to the root of these terms; or
 - 13.2.1.2. Claim specific performance of all of the Client's obligations whether or not due for performance,
 - 13.2.1.3. In either event without prejudice to Demographica's right to claim damages.

- 13.3. Either Party shall be entitled to summarily terminate these terms in the event of the other Party being placed in liquidation or under judicial management, or business rescue whether provisionally or finally, or in the event of the other Party entering into a compromise with its creditors generally. All amounts due by the other Party in terms of these terms shall, in the circumstances contemplated in this clause, immediately become due and payable to the prejudiced Party.

14. Governing Law

These terms and conditions shall be governed and interpreted in accordance with the laws of the Republic of South Africa.

15. Dispute Resolution

- 15.1. Any disputes arising from or in connection with these terms shall be referred to a senior representative of both Parties, who will attempt in good faith to resolve the matter.
- 15.2. Should the Parties representatives be unable to resolve the matter within 10 days of referral then the aggrieved Party may attend to refer the matter to arbitration to be finally resolved in accordance with the Rules of the Arbitration Foundation of Southern Africa by an arbitrator or arbitrators appointed by the Foundation.
- 15.3. Notwithstanding the aforementioned Demographica shall be entitled to approach a court of competent jurisdiction for the resolution of any matter relating to non-payment by the Client.

16. Severability

If any clause or term of hereof shall have been held by a court of competent jurisdiction to be invalid, unenforceable or illegal, then the remaining terms and provisions hereof shall be deemed to be severable therefrom and shall continue in full force and effect unless such invalidity, unenforceability or illegality goes to the root of these terms.

17. Domicilium and Notices

- 17.1. The parties choose domicilium citandi et executandi ("domicilium") for the purposes of the giving of any legal notice or the serving of any process, as follows:
- 17.1.1. Demographica - 2nd Floor, Block 1, Oxford Manor, 196 Oxford Road, Illovo, Johannesburg, South Africa, 2196, South Africa;
- 17.1.2. The Client - Registered head office or the place of business.

18. General

- 18.1. These terms together with Demographica's Privacy Policy, which shall be read as if specifically included herein, will constitute the sole agreement between the Parties and shall supersede all other agreements and/or representations whether written, oral and/or implied between the Parties.

- 18.2. Neither Party shall be bound by any express or implied term, representation, promise or the like not recorded herein. For purposes hereof a "written document" shall exclude any written document that is in the form, either wholly or partly, of a data message as defined in the ETCA, and "signed" shall mean a signature executed by hand with a pen and without any electronic process or intervention.
- 18.3. No addition to, variation, or agreed cancellation of these terms, including this clause, shall be of any force or effect unless in writing and signed by or on behalf of the Parties. For purposes hereof "in writing" shall exclude any written document that is in the form, either wholly or partly, of a data message as defined in the ETCA, and "signed" shall mean a signature executed by hand with a pen and without any electronic process or intervention.
- 18.4. No indulgence which either Party ("the grantor") may grant to the other ("the grantee") shall constitute a waiver of any of the rights of the grantor, who shall not thereby be precluded from exercising any rights against the grantee which may have arisen in the past or which might arise in the future.
- 18.5. Nothing in these terms shall constitute a partnership, joint venture, agency or employment between the Parties hereto, and neither Party shall have the authority or power to bind, or contract in the name of, or to create a liability against, the other in any way for any purpose.

19. ACCEPTANCE OF THESE TERMS AND CONDITIONS SHALL BE DEEMED TO HAVE TAKEN PLACE IN THE EVENT THAT THE CLIENT ENGAGES WITH DEMOGRAPHICA FOR THE RECEIPT OF ANY SERVICES. EVERY INSTANCE OF THE SERVICES SHALL BE SUBJECT TO THE ABOVE TERMS AND CONDITIONS.