

**TERMS & CONDITIONS (27/06/2024):****1. GENERAL**

These Terms and Conditions supersede any previous Terms and Conditions distributed in any form. Carmin The Creative reserves the right to change any rates and any of the Terms and Conditions at any time and without prior notice. The following Terms and Conditions of Service apply to all products and services provided by Carmin The Creative. All work is carried out by Carmin The Creative on the understanding that the client has agreed to Carmin The Creative's terms and conditions. Copyright is retained by Carmin The Creative on all design work including words, pictures, ideas, visuals and illustrations unless specifically released in writing and after all costs have been settled. If a choice of design is presented, only one solution is deemed to be given by Carmin The Creative as fulfilling the contract. All other designs remain the property of Carmin The Creative, unless agreed in writing that this arrangement has been changed.

**2. CONDUCT**

Carmin The Creative abides by the International Chamber of Commerce (ICC) Code of Advertising and Marketing Communication Practice (2006 Edition) and shall furnish professional standards of skill, care, diligence and professional judgment in the performance of its obligations under this Agreement.

**3. PROJECT ACCEPTANCE & CONFIRMATION**

At the time of proposal, Carmin The Creative will provide the client with a formal cost estimate. For the avoidance of doubt, the client is required to endorse, with signature and date, a copy of the cost estimate provided by Carmin The Creative, as an indication of acceptance. Said document must be returned to Carmin The Creative within a time frame of five business days from the date of acceptance. In adherence to protocol, no services shall commence on the project until the aforementioned signed document is received by Carmin The Creative, unless stated otherwise in section 3.1 below.

**3.1. PROJECT ACCEPTANCE & CONFIRMATION CIRCUMSTANCES**

In the event that a cost estimate is not signed by the client, Carmin The Creative retains the right to deem verbal acceptance or confirmation of said estimate as sufficient for proceeding with the proposed services. This acceptance may be conveyed through electronic means, such as email or personal message, and shall be considered binding upon the parties involved.

**4. COST ESTIMATES**

The client shall be responsible for any increases in Carmin The Creative's costs as a result of any changes to such job parameters or other material made by the client either directly or indirectly after the date of any cost estimate given by Carmin The Creative, and for any increase in costs by way of overtime charges if the time and date for completing a project is brought forward by The Client either directly or indirectly. Cost Estimates are valid for a period of thirty (30 Days) from the date of cost estimation.

**5. DESIGN CHARGES AND PAYMENT**

Charges for design services to be provided by Carmin The Creative, will be set out in the written estimate that is provided to the client. At the time of the client's signed acceptance of this cost estimate, indicating acceptance of the Terms & Conditions, a deposit of 50% of the estimated cost fee will become immediately due. Work on the project will not commence until Carmin The Creative has received this amount. Should the project be delayed or stand still by The Client without any progress for 30 (Thirty) working days from date of last proof supplied by Carmin The Creative, a Milestone payment of 15% will be required.

## **6. LATE PAYMENT PENALTY**

Invoices are due within fourteen (14) days of issuance. In the event that payment is not received within this period, a late fee of five percent (5%) of the total invoice amount will be applied for each week the payment remains overdue. This late fee will be calculated and added on a weekly basis until the full payment is received. The Client agrees to pay any such late fees promptly. Carmin The Creative reserves the right to suspend ongoing work and withhold delivery of completed work until all outstanding invoices, including late fees, are paid in full.

## **7. SUPPLY OF DESIGN ELEMENTS AND DATA**

A charge may be made to cover any additional work involved where the design elements/data supplied or specified is not clear, legible, or in the prescribed format/specification to produce satisfactory results. Where material is so supplied or specified, responsibility will not be accepted

for imperfect work caused by defects in the supply, format or specification. This includes any incompatibility or defects caused by differing software versions or conflicting operating systems.

## **8. PRELIMINARY WORK**

All work carried out, whether experimentally or otherwise, at the client's request shall be deemed chargeable.

## **9. SUB-CONTRACTING**

Unless specifically requested to the contrary, Carmin The Creative shall be entitled to sub-contract any work to any third parties as it thinks fit. Carmin The Creative shall not be responsible to the client for any delays occasioned by a sub-contractor failing to meet deadlines imposed upon it by Carmin The Creative for completion of any job, for any reason outside the direct control of Carmin The Creative.

## **10. PERFORMANCE, DELIVERY OR COLLECTION**

Unless otherwise agreed in writing, all times cost estimated for performance or delivery or availability for collection are given in good faith but are not guaranteed by Carmin The Creative. The time for performance or delivery or availability for collection shall in every case be dependent upon prompt receipt of all necessary information, final instructions or approvals from the client. Alteration by the client of its requirements may result in delay in performance, delivery and/or availability for collection for which Carmin The Creative shall bear no liability. Carmin The Creative shall not be held liable for any delay in any content creation, print production and late delivery thereof. Any packaging supplied by Carmin The Creative, unless otherwise expressly agreed, is intended to provide adequate protection throughout normal conditions of transport by the means specified in the agreement or as otherwise agreed. If the client (or the intended recipient) fails to take delivery on the agreed date or to collect on the agreed collection date, or if no specific delivery or collection date has been agreed, when the goods are ready for dispatch, Carmin The Creative shall be entitled to store the goods and to charge the client the reasonable cost of doing so, and to tender its account for such charges to the client, provided that in no event shall Carmin The Creative be under any liability in respect of any loss or damage following the dispatch of any goods from the Company's premises.

## **11. COPYRIGHTS AND TRADEMARKS**

By supplying text, images and other data to Carmin The Creative for inclusion in The Client's business cards, flyers, pamphlets, website or other medium, the client declares that it holds the appropriate copyright and/or trademark permissions. The ownership of such materials will remain with the client, or rightful copyright or trademark owner. Any artwork, images, or text supplied and/or designed by Carmin The Creative on behalf of the client, will remain the property of Carmin The Creative and/or its suppliers. The client may request in writing from Carmin The Creative, the necessary permission to use materials (for which Carmin The Creative holds the copyright) in forms other than for which it was originally supplied, and Carmin The Creative may, at its discretion, grant this. Such permission must be obtained in writing before it will allow any of the aforesaid artwork, images, text, or other data to be used. By supplying images, text, or any other

data to Carmin The Creative, the client grants Carmin The Creative permission to use this material freely in the pursuit of the desired outcome. Should Carmin The Creative, or the client supply an image, text, audio clip or any other file for use in a business cards, flyers, pamphlets, website, multimedia presentation, print item, exhibition, advertisement or any other medium believing it to be copyright and royalty free, which subsequently emerges to have such copyright or royalty usage limitations, the client will agree to allow Carmin The Creative to remove and/or replace the file on the site. The client agrees to fully indemnify and hold Carmin The Creative free from harm in any and all claims resulting from the client in not having obtained all the required copyright, and/or any other necessary permissions. Unless otherwise specified all fonts used in any design material supplied by Carmin The Creative will remain property of Carmin The Creative.

## **12. IMAGES**

Carmin The Creative will attempt to ensure that only royalty free images are used in custom designs. It is agreed that Carmin The Creative, employees, directors and suppliers, will not be held liable for any damages, costs and expenses, including reasonable legal fees, arising out of or related issues, copyright, or trademark infringement resulting from images used upon request of the client or provided by the client.

## **13. ARTWORK**

Carmin The Creative prepares and checks artwork for reproduction as carefully as possible. However, Carmin The Creative does not accept responsibility for any errors caused by the client or suppliers (for example typesetters, printers etc.) once artwork has been approved for print or production by the client. Carmin The Creative agrees to hold on behalf of the client finished artwork or sketch work that has been created by Carmin The Creative or used by Carmin The Creative in furtherance of this agreement and accept responsibility for any damage or loss of such artwork and sketch work held by Carmin The Creative during the term of this agreement and for one year thereafter. Artwork or sketch work kept for over one year after the termination of this agreement will be destroyed unless claimed.

## **14. PROOFING OF FINAL PROJECT**

To limit any possible errors in artwork, designs will not go to production until they have been approved by the client. Carmin The Creative will not be held responsible for errors if the client misses something in the proof, has reused a printed or digital proof, or if the client, during order placement, has requested the order go to production without proofing.

## **15. ALTERATIONS**

The client agrees that changes required over and above the estimated work or required to be carried out after acceptance of the draft design will be liable to a separate charge. The client also agrees that Carmin The Creative holds no responsibility for any amendments made by any third party, before or after a design is published.

## **16. INDEMNITY**

The client shall indemnify Carmin The Creative in respect of all financial liability (including professional costs damages and accounts of profits) arising out of any claims made against Carmin The Creative alleging infringement of any intellectual property rights if such claim arises from the use of information, inventions, ideas, designs, artwork, copy or other material provided by The Client.

## **17. TRAVELLING**

Should Carmin The Creative need to travel on the client's business outside Gauteng but within South Africa and upon The Client's request, Carmin The Creative shall be reimbursed at a "per diem" expense per person travelling of ZAR 2,000.00 (ex VAT). In the event that Carmin The Creative is required to travel outside of South Africa upon The Client's request, Carmin The Creative shall be reimbursed at a "per diem" expense per person travelling of ZAR 8,000.00 (ex VAT).

## **18. LICENSING**

Any design, copywriting, drawing, idea, video or code created for the client by Carmin The Creative, or any of its contractors, is licensed for use by the client and may not be modified, in any way or form without the express written consent of Carmin The Creative and any of its relevant sub-contractors. All design work where there is a risk that another party make a claim, should be registered by the client with the appropriate authorities prior to publishing or first use or searches and legal advice sought as to its use. Carmin The Creative will not be held responsible for any and all damages resulting from such claims. Carmin The Creative is not responsible for any loss, or consequential loss, non-delivery of products or services, of whatever cause. The client agrees not to hold Carmin The Creative responsible for any such loss or damage. Any claim against Carmin The Creative shall be limited to the relevant fee(s) paid by the client .

## **19. DATA FORMATS**

The Client agrees to Carmin The Creative's definition of acceptable means of supplying data to the company. Text is to be supplied to Carmin The Creative in format as standard text via email or personal message. Images which are supplied in an electronic format, are to be provided in a format as prescribed by Carmin The Creative via Google Drive, or e-mail. Images must be of a

quality suitable for use without any subsequent image processing, and Carmin The Creative will not be held responsible for any image quality which the client later deems to be unacceptable. Carmin The Creative cannot be held responsible for the quality of any images which the client wishes to be scanned from printed materials. Additional expenses may be incurred for any necessary action, including, but not limited to, photography and art direction, photography searches, media conversion, digital image processing, or data entry services.

## **20. PROJECT DURATION**

Any indication given by Carmin The Creative of a project's duration is to be considered by the client to be an estimation. Carmin The Creative cannot be held responsible for any project over-runs, whatever the cause. Estimated project duration should be deemed to be from the date that cleared funds are received by Carmin The Creative for the initial payment or by date confirmed in writing by Carmin The Creative.

## **21. PROJECT COMPLETION**

Carmin The Creative considers the project complete upon receipt of the client review and formal approval. Other services such as printing, display panel production, film work, website uploading, publishing etc., either contracted on the client's behalf constitute a separate project and can be treated as a separate charge.

### **21.1 PROJECT PAYMENT ALLOCATION**

Any payments made to Carmin The Creative for services rendered on a project-based payment system cannot be exchanged or reallocated to an hourly-based payment system whether or not a task/activity/projects has been completed. This stipulation remains in effect regardless of any agreements or arrangements that may have been agreed upon by both parties.

### **21.2 PROJECT PAYMENT EXPIRY BOUNDRIES**

Once a cost estimate has been accepted and agreed upon by both parties, along with finalising timelines and deadlines, all payments made or owed to Carmin The Creative cannot be reallocated to any other projects, tasks, designs, activities, or hours once the agreed-upon deadline or project timeline has passed.

## **22. DEFAULT**

An account shall be considered default if it remains unpaid for 30 days from the date of invoice. Carmin The Creative shall be considered entitled to remove Carmin The Creative and/or the client material from any and all computer systems, until the amount due has been fully paid. This includes any and all unpaid monies due for services, including, but not limited to, business cards, flyers, pamphlets, hosting, domain registration, search engine submission, design and

maintenance, sub-contractors, printers, photographers and libraries etc. Removal of such materials does not relieve the client of its obligation to pay the due amount. Client's whose accounts become default agree to pay Carmin The Creative reasonable legal expenses and third-party collection agency fees in the enforcement of these Terms and Conditions.

### **23. KIDS' PRIVACY**

My website is intended for the use of adults and individuals 13 years of ages and older. My website is not directed to children under the age of 13. Users under the age of 13 must have the permission and/or assistance of an adult while using or visiting my website.

### **24. DESIGN CREDITS**

The client agrees to allow Carmin The Creative to place a small credit on printed material exhibition displays, advertisements and/or a link to Carmin The Creative's own website on the client's website. This will usually be in the form of a small logo or line of text placed towards the bottom of the page. The client also agrees to allow Carmin The Creative to place designs on Carmin The Creative's own website and social media for demonstration purposes and to use any designs in its own publicity. This includes cancelled projects, and projects not been finalised within an 8-month period.

### **25. CONFIDENTIALITY AND EXCLUSIVITY**

It is Carmin The Creative's duty not to disclose any confidential information of the client during or after Carmin The Creative's appointment without the client's permission. However, this does not apply to the information already in the public domain or which subsequently comes into the public domain. The client acknowledges that it is Carmin The Creative's right to use any general marketing and advertising intelligence, which Carmin The Creative has gained during this appointment. The client views any breach by Carmin The Creative of its confidential business information as serious and reserves the right to enforce the confidentiality of such information by any legal means available to it, including but not limited to, injunctive relief.

### **26. RIGHTS OF REFUSAL**

Carmin The Creative will not include in its designs, any text, images or other data which it deems to be immoral, offensive, obscene or illegal. All advertising material must conform to all standards laid down by all relevant advertising standards authorities. Carmin The Creative also reserves the right to refuse to include submitted material without giving reason. Any images and/or data that Carmin The Creative does include in all good faith, and then finds out that it contravenes these Terms and Conditions, the client is obliged to allow Carmin The Creative to remove the contravention without hindrance, or penalty. Carmin The Creative is to be held in no way responsible for any such data being included.

### **27. BUSINESS OR MARKETING FAILURE**

The client agrees that if any service or design provided by Carmin The Creative does not generate the desired outcome, that Carmin The Creative will not be held responsible. Carmin The Creative will also not be held responsible to refund the client at any time.

### **28. TERMINATION**

A termination notice can also be served at any time before the end of the term of this contract by either party sending the other a written notice. The termination period shall be no less than a thirty (30) day calendar month. The client agrees to settle Carmin The Creative's dues from the last date of the notice period. Any cancellation must be in writing and must be sent or delivered to Carmin The Creative and shall be deemed effective only as at the date received by Carmin The Creative. These include a recalculation of the fees based on the new delivery period and the delivered scope of work. All ideas, designs, concepts, original compositions, finished advertisements, radio and television commercials and all other works and material prepared or acquired by Carmin The Creative will be assigned and given to the client after termination of contract and settlement of all payments to Carmin The Creative due for services actually performed, and subject to the terms of any license or permission pursuant to which Carmin The Creative may have obtained the use of such material and to such material being in the public domain.

**29. SOUTH AFRICAN LAW**

This Contract and any other matters concerning the relationship between Carmin The Creative and the client shall be governed by and construed in accordance with the Law of South Africa.

**30. JURISDICTION**

Any dispute that might arise between the Parties shall be finally settled by the competent courts in South Africa.

**31. CARMIN THE CREATIVE STAFF**

The client agrees not to employ Carmin The Creative's personnel during the tenure of the contract and for a subsequent period of two years from the date of its termination.

**32. DISCLAIMER**

Carmin The Creative makes no warranties of any kind, express or implied, for any and all products and/or services that it supplies. Carmin The Creative will not be held responsible for any and all damages resulting from products and/or services it supplies. Carmin The Creative is not responsible for any loss, or consequential loss of data, or non-delivery of products or services, of whatever cause. While Carmin the Creative takes reasonable steps to investigate the materials she recommends, Carmin The Creative accepts no responsibility for the performance or quality of

materials or any consequential loss arising from their failure. The client agrees not to hold Carmin The Creative responsible for any such loss or damage. Any claim against Carmin The Creative shall be limited to the relevant fee(s) paid by the client.

Carmin The Creative reserves the right to use the services of sub-contractors, agents and suppliers and any work, content, services and usage is bound by their Terms and Conditions. Carmin The Creative will not knowingly perform any actions to contravene these and the client also agrees to be so bound. Carmin The Creative and its clients agree to comply with printers Terms and Conditions which include disclaimers for non-completion on time and the flexibility to supply quantities within 10% of the total ordered. Carmin The Creative recommend that if an exact quantity is required, then 10% extra is added to the quantity and extra time made available should the job be delayed.