

# **BREINSTORM BRAND ARCHITECTS TERMS AND CONDITIONS OF SERVICE**

## **INTRODUCTION**

1. Breinstorm Brand Architects CC (“Breinstorm”) is a CC that carries on business as a design and brand consultancy.
2. The “client” shall mean the CC, company, sole proprietary, joint venture or other entity so indicated on the quote to which these terms and conditions are attached and whose duly authorised representative has signed as provided for below. The client wishes to engage the services of Breinstorm and does so on the terms and conditions set out herein.

## **3. PAYMENT**

- 3.1. All amounts referred to in the quote are exclusive of VAT.
- 3.2. A deposit of 50% of the quote is payable by the client as a deposit within seven calendar days of acceptance of the quote by the client (“the deposit”).
- 3.3. A further 25%, interim payment, will be payable within 60 calendar days of the commencement of the project by Breinstorm (“the interim payment”).
- 3.4. The last 25%, final payment as indicated above, will be payable on delivery of the project to the client by Breinstorm.

## **4. GENERAL TERMS AND CONDITIONS**

- 4.1. Should the client at any stage from date of acceptance of the quote and for whatever reason cancel the project, it shall forfeit all monies, including any deposits and interim payments already paid or due to Breinstorm at the date of cancellation. Should payment of any amounts be due but not yet received by Breinstorm at the time of cancellation, such amount will become immediately due and payable by the client to Breinstorm.
- 4.2. Should the client cancel the project after payment of the interim payment but before delivery it shall be liable for the full amount in respect of the project.
- 4.3. It is specifically agreed that all copyright in and to all material contained in the project including but limited to all designs, fonts, photographs, artistic works, layouts, vest in Breinstorm (“the material”). In this regard Breinstorm hereby grants the client an exclusive licence to use the material in the final form of the project only as indicated in the “project usage” section of the quote. Nothing in

this agreement shall be construed as an assignment of any rights in such material from Breinstorm to the client.

- 4.4. It is further acknowledged by the client that the use of the material and the brief in relation to the project is specific. Should the client wish to use the material for any other purpose not specified in the quote, or referred to in clause 4.3 above or otherwise in writing and signed by both the parties. The client shall be precluded from using the material in any other such manner except in the form of the project.
- 4.5. To the extent necessary the client hereby assigns all the rights in and to the copyright in the material for the project. The client will further sign any documentation necessary to give effect to this clause.
- 4.6. All quotes are valid for 14 calendar days from the date of receipt by the client (whether signed or unsigned by Breinstorm) unless an extension is given by Breinstorm to the client in writing by a duly authorised representative of Breinstorm.
- 4.7. Should the client require Breinstorm to place media space for the client Breinstorm will source the media space and present you with the amounts and costs of the media space including but not limited to any online advertising, radio time, television time, print, advertisements and/or newspaper advertisements. These media placements must be paid for in full at the rate required by the seller of the media, along with any placement costs in respect of Breinstorm prior to any placement being made by Breinstorm.
- 4.8. Breinstorm will give the client written notification to the client as to when payment in respect of clause 4.7 above is expected and should payment not be cleared and received by Breinstorm in full prior to this date, then the media placements will not take place and Breinstorm reserves the right to cancel any placements in this regard. The client agrees that it will have no claim against Breinstorm whatsoever if media placements are cancelled for non payment by the client, as contemplated in this clause.
- 4.9. Unless otherwise agreed to in writing, the client shall collect the completed project from the offices of Breinstorm or at such other place as agreed to in writing. Should the client request that the project should be delivered elsewhere, the client shall be liable for all delivery costs.
- 4.10. All the risk in and to the project shall pass to the client once the client leaves the offices of Breinstorm or such other premises as agreed to in writing by the parties.
- 4.11. Once the project has been completed and delivered or collected by the client, Breinstorm shall not be obliged to store any copy of the completed project or any part thereof. Should Breinstorm store the work and should the client require a copy of the project at a later stage, the client shall bear the costs of such a copy.

## 5. PRODUCTION

- 5.1. After receipt of the deposit, the client will be presented with a production specification and time schedule relating to the project which it will be required to sign off (“the design specification”).
- 5.2. Should the client, after sign off of the design specification, require any changes to the design specification it will be liable for these extra costs of production. In this regard at the time of signature of this agreement the rate for junior designers is R550.00 plus VAT per hour and the rate for senior designers is R650 plus VAT per hour. These are subject to inflationary or reasonable changes without further notice. Overtime rates shall be charged at 1.5 x the rate indicated above. It is specifically recorded that the project shall be executed by Breinstorm during normal working hours and without overtime unless it is agreed in writing by the parties that time is of the essence.
- 5.3. Notwithstanding the above, any time communicated for completion of the project shall be an estimate and shall not be binding on the parties unless otherwise agreed to in writing.
- 5.4. The client shall provide Breinstorm with all the information Breinstorm requires in order to complete the project.
- 5.5. Breinstorm shall under no circumstances be responsible for any direct or indirect loss suffered by the client due to the project not being completed timeously as a result of the client’s failure to deliver the required information to Breinstorm.

## 6. DESIGN

- 6.1. The client will be presented with a mock up design of its requests. It will be allowed one set of minor, immaterial changes after first presentation. Should the client after first presentation cancel or reject the project Breinstorm shall be entitled to retain the deposit and any interim payments that may have been made by the client.
- 6.2. If the client gives either written changes or verbal changes to the design it shall be liable for all costs in respect of these changes at the rate outlined above.
- 6.3. The client specifically acknowledges that any instruction given to Breinstorm which should not be in writing carries a greater risk of having problems in execution and in this regard the client agrees that Breinstorm cannot be held liable for any damages or problems as a result of instructions not given by client in writing to Breinstorm regardless of cause or whether due to the fault, or negligence of Breinstorm.

## 7. GENERAL

- 7.1. Should the client breach any provision of this agreement ("the defaulting party") and fail to remedy such breach within 14 days of receiving written notice from Breinstorm ("the aggrieved party") requiring it to do so, then the aggrieved party shall be entitled, without prejudice to any other rights that it may have, whether under this agreement or in law, to cancel this agreement without notice or to claim immediate specific performance of all of the defaulting party's obligations, whether or not due for performance, in either event without prejudice to the aggrieved party's right to claim damages.
- 7.2. No addition to, variation of, novation, or agreed cancellation of this agreement shall be of any force or effect unless in writing and signed by or on behalf of the parties in a single document.
- 7.3. This agreement constitutes the sole record of the agreement between the parties. No party shall be bound by any express or implied term, representation, warranty, promise or the like not recorded herein.
- 7.4. The parties choose domicilium citandi et executandi for all purposes of the giving of any notice, the payment of any sum, the serving of any process and for any other purpose arising from this agreement as the address and contact details indicated at the front of this document or at such other address, not being a post office box or poste restante, of which the party concerned may notify the others in writing.
- 7.5. No relaxation or indulgence which any party may grant to any other shall constitute a waiver of the rights of that party and shall not preclude that party from exercising any rights which may have arisen in the past or which might arise in the future.
- 7.6. The Client shall not assign, transfer, charge or make over this agreement or any of its rights or obligations without the prior written consent of Breinstorm.
- 7.7. This agreement shall be governed according to the laws of the Republic of South Africa.