

# **Creative Care Terms and Conditions**

## **Application and entire agreement**

1. These Terms and Conditions apply to the provision of services detailed in our quotation (Service) by Nicolene van der Westhuizen of Creative Care (or Service Provider) to the person buying the services (Customer)
2. You are deemed to have accepted these Terms and Conditions when you accept our quotation or for the date of any performance of the Service (whichever happens earlier) and these Terms and Conditions and our quotation (the Contract) are the entire agreement between us.
3. You acknowledge that have relied on any statement, promise or representation made or given by or on our behalf. These Conditions apply to the Contract to the exclusion of any other terms that you try to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

## **Interpretation**

4. A “business day” means any day other than Saturday, Sunday or South African Public holiday.
5. The heading in these Terms and Conditions are for the convenience only and do not affect these interpretations.
6. Words imparting the singular number shall include the plural and vice-versa.

## **Service**

7. We warrant that we will use reasonable care and skill in our performance of the Service which will comply with the quotation, including any specification in all material respects. We can make any changes to the Service which is necessary to comply with any applicable law or safety requirement and we will notify you if this is necessary.
8. We will use our reasonable endeavors to complete the performance of the Service within the time agreed or as set out in the quotation; however time shall not be of the essence in the performance of our obligation.
9. All the Terms and Conditions apply to the supply of any goods as well as Service unless we specify otherwise.

## **Your obligations**

10. You must obtain any permission, consents, licenses or otherwise that we need and must give us with access to any and all relevant information, materials, properties and any other matter which we need to provide the Services.
11. If you do not comply with clause 10, we can terminate the Services.
12. We are not liable for any delay or failure to provide the Service if this is caused by your failure to comply with the provision of this section (your obligation)

## **Fees**

13. The fees (Fees) for the Service are set out in the quotation and are on time and materials basis.

14. In addition to the Fees, we can recover from you
  - a. Reasonable incidental expenses including but not limited to, travel expenses, hotel costs, subsistence of any associated expenses,
  - b. The cost of services provide by the third party and require by us for the performance of the Services, and
  - c. The cost of any materials required for the provision of the Services or unless otherwise stated in quote.
15. You must pay us for any additional services provided by us that are not specified in the quotation in accordance with our the current applicable rate in effect of the time to performance or such other rate as may be agreed between us. The provisions of clause 14 also apply to these additional services.
16. The Fees are of any applicable VAT which are imposed or charged by any competent authority.

### **Cancellation and amendments**

17. We can withdraw, cancel or amend a quotation if it has not been accepted by your, or if the Services have not started, with a period of 7(seven) days from the date of the quotation (unless the quotation has been withdrawn).
18. Either we or you can cancel an order for any reason prior to you acceptance (or rejection) of the quotation.
19. Once an order has been confirmed, cancellations for that order will be subject to a 25% (twenty-five *per centum*) cancellation fee or a minimum R200 handling and administration fee (whichever is higher).
20. If you want to amend any details of the Services you must inform us in writing as soon as possible. We will use reasonable endeavors to make any required changes and additional cost will be included if the Fees and invoiced.
21. If, due to circumstances beyond or control, including those set out in the clause below (Circumstances beyond a party's control), we have to make any change in the Services or how they are provided, we will notify you immediately. We will use reasonable endeavors to keep any such changes to a minimum.
22. Creative Care is entitled to refuse any order placed by the Client.

### **Payment**

23. We will invoice you for the payment of the Fees when reflected in bank account with
  - a. 50% (fifty *per centum*) deposit two weeks before the services is rendered.
  - b. Final payment three days before the event.
24. You must pay the Fess with the above stipulated days of the date of the event, or otherwise in accordance with any agreed terms between us.
25. Time of payment shall be of the essence of the Contract.
26. Without limiting any other right or remedy we have for statutory interest, if you do not pay within the period set out above, we will charge you interest of the rate of the current prime rate + 2% (two *per centum*) per month.
27. All payment due under these Terms and Conditions must be made in full without any deduction or withholding except a required by law and neither of us can assert any credit, set-off or counterclaim against the other in order to justify withholding payment of any such amount in whole or in part.
28. Subject to the provisions of the Consumer Protection Act, no 68 of 2008, as amended, if applicable, all prices/rates are subject to alteration without notice, and orders will be

processed at the price/rate applicable at time of dispatch. All prices/rates quoted by Creative Care are based on, but not limited to, foreign exchange, freight-/ insurance-/landing charges, dock-/customs-/import duties, rail and statutory wage rates applicable at the time of negotiations for the purchase of the goods to which the invoice in question relates, and consequently, any variation in such prices/rates will be for the account and be borne by the Client, with notice

29. If you do not pay with the period set out above, we can suspend any further provision of the Service and cancel any services which have been ordered by, or otherwise arranged with you.
30. Receipts for payment will be issued by us only at your request
31. All payment must be made bank account as specified in quotation, unless otherwise agreed in writing between us. Creative Care accepts payment by way of Electronic Funds Transfer and cash.

### **Subcontracting**

32. Products are received from a third party and will try by all means possible to provide excellent products and will be replaced within reasonable requests.
33. If you choose not to use any of the products, we cannot be held liable for the outcome.

### **Termination**

34. We can terminate the provision of the Service immediately if you:
  - a. Commit a material breach of your obligations under the Terms and Conditions, or
  - b. Fail to pay any amount due under the Contract of the due date for payment, or
  - c. Are or become or, in our reasonable opinion are about to become the subject of a bankruptcy order or take advantage of any other statutory provision for the relief of insolvent debtor, or
  - d. Enter into a voluntary arrangement, or any other scheme of arrangement is made with its creditors, or
  - e. Convene any meeting of your creditors, enter into voluntary or compulsory liquidation, have a receiver, manager, administrator or administrative receiver appointed in respect of your assets or undertaking or any part of them, any document are filed with the court for the appointment in respect of your, notice of intention to appoint an administrator is given or any of your directors, a resolution is passed or petition presented to any court for your winding up for the granting of an administration order in respect of you, or an proceeding are commenced relating to your insolvency or possible insolvency.

### **Intellectual property**

35. We reserve all copyright and any other intellectual property rights which may subsist in a good supplied in connection with the provision of the Service. We reserve the right to take any appropriate action to restrain or prevent the infringement of such intellectual property rights.

## **Liability and indemnity**

36. Our liability under these Terms and Conditions, and in breach of statutory duty, and injustice or misrepresentation or otherwise, shall be limited as set out in the section.
37. The total amount of our liability is limited to the total amount of the Fees payable by you under the Contract.
38. We are not liable in connection with our provision of the Service or the performance of any of our other obligations under the Terms and Conditions or the quotation for:
  - a. Any indirect, special or consequential loss, damage, costs or expenses or,
  - b. Any loss of profits, loss of anticipated profits, loss of business, loss of data, loss of reputation or goodwill, business interruption or other third party claims, or
  - c. Any failure to perform any of our obligation is such delay or failure is due to any cause beyond or reasonable control, or
  - d. Any losses caused directly by any failure or your breach in relation to your obligation or
  - e. Any losses arising directly or indirectly from the choice of Service and how they will meet your requirements or your use of the Service or any goods supplied in connection with the Service
39. You must indemnify us against all damages, cost, claims and expenses suffered by us arising from any loss or damage to any equipment caused by you or your agents or employees.
40. Nothing in these Terms and Conditions shall limit or exclude our liability for death or personal injury caused by our negligence, or for any fraudulent misrepresentation, or for any other matters for which it would be unlawful to exclude or limit liability.

## **Data protection**

41. When supplying the Service to the Customer, the Service Provider may gain access to and or acquire the ability to transfer, store or process personal data of employees of the Customer
42. The parties agree that where such processing of personal data takes place, the Customer shall be the 'data controller' and the Service Provider shall be the 'data processor' and may be amended, extended and or reenacted from time to time
43. For the avoidance of doubt, data will be collected, used, processed, shared, destructed and stored according to the Protection of Personal Information Act.
44. The Service provider shall only Process Personal Data to the extent reasonably required to enable it to supply the Services as mentioned in these terms and conditions or as requested and agreed with the Customer, shall not retain any Personal Data longer than necessary for the Processing and refrain from Processing any Personal Data for the it own or for any third party's purposes.
45. The Service Provider shall not disclose Personal Data to any third parties other that employees, directors, agents, sub-contractors or advisors on a strict "need-to-know" basis and only under the same (or more extensive) conditions as set out in these terms and conditions or to the extent required by applicable legislation and or regulations.
46. The Service Provider shall implement and maintain technical and organisation security measures as are required to protect Personal Data processed by the Service Provider on behalf of the Customer.

47. Further information about the Service Providers approach to data protection is specified in its data protection notice which can be presented when needed. For any enquiries or complaints regarding data privacy, you can email: [creativecare19@outlook.com](mailto:creativecare19@outlook.com)

#### **Circumstances beyond a party's control**

48. Neither of us is liable for any failure or delay in performing our obligations where such failure or delay results from any cause that is beyond the reasonable control of that party. Such causes include, but are not limited to: industrial actions, civil unrest, fire, flood, storms, earthquakes, acts of terrorism, acts of war, governmental action or any other event that is beyond the control of the party in question. If the delay continues for a period of 90 days, either of us may terminate or cancel the Services to be carried out under these Terms and Conditions.

#### **Communications**

49. All notice under the Terms and Conditions must be in writing and signed by, or on behalf of the party giving notice (or duly authorized officer of that party).
50. Notices shall be deemed to have been duly given:
- When delivered, if delivered by courier or other messenger (including registered mail) during the normal business hours of the recipient;
  - When sent, if transmitted by email and a successful transmission report or return receipt is generated;
  - On the fifth business day following mailing, if mailed by nation ordinary mail, or
  - On the tenth business day following mailing, if mailed by airmail.
51. All notices under these Terms and Conditions must be addressed to the most recent address, email address of notified to the other party.

#### **No waiver**

52. No delay, act or omission by a party in exercising any right or remedy will be deemed a waiver of that, or any other, right or remedy not stop further exercise of any other right, or remedy.

#### **Severance**

53. If one or more of these Terms and Condition is found to be unlawful, invalid or otherwise unenforceable, that those provisions will be deemed severed from the remainder of these Terms and Conditions (which will remain valid and enforceable).

#### **Law and jurisdiction**

54. This Agreement shall be governed by and interpreted according to the South-African law and all disputes arising under the Agreement (including non-contractual disputes or claims) shall be subject to the exclusive jurisdiction of the South-African laws.

#### **Delivery**

55. Orders will only be released for collection or dispatched for delivery once payment in full, including interest, if applicable, and reflects in Creative Care's bank account. A purchase order may, at the sole discretion of Creative Care, be accepted. Creative Care shall not be liable for missed deadlines due to non-payment or late payment by the Client.

56. Subject to availability and receipt of payment, requests will be processed within 2 – 14 business days (depending on supplier lead times, stock availability and delivery method) and delivery confirmed by way of email communication (reference number as well as collection address, depending on shipping option – respectively, delivery via courier or collection).
57. Creative Care is committed to providing secure online payment facility via EFT. Users can use Debit or credit card for purchases. Both cards warrant that you are fully authorised to use the debit card supplied for purposes of paying the Goods.
58. Orders will only be released for collection or dispatched for delivery once payment in full, including interest, if applicable, reflects in Creative Care's bank account.
59. Goods remain the property of Creative Care until paid in full. The risk in and to the products shall pass from Creative Care to the Client upon the date of delivery thereof. Any delivery notes (be it a copy or an original) signed by the Client, a representative of the Client (e.g. secretary, security) or a third party engaged to transport the products shall be conclusive proof that delivery was made to the Client.
60. Orders above the value of R 650.00 (six hundred and fifty rand) including VAT being delivered the same address, qualify for free delivery option. This is subject to certain orders and will be confirmed by Creative Care if the client do not qualify for free delivery (for example workshops in different areas)
61. Delivery excludes freight insurance which remains the Client's responsibility.
62. For orders that do not qualify for free delivery, Creative Care will quote the Client using an external courier service to affect delivery, and once accepted and paid by the Client.
63. Creative Care will arrange for goods or orders to be delivered to the Client's specified address. Should the Client require freight insurance, the Client is to request same from Creative Care in writing and accepted by Creative Care. The Client will be liable for the payment of such insurance costs before despatch of the goods/order/s by Creative Care.
64. Creative Care accepts no responsibility whatsoever for any loss or damages caused by late delivery or non-delivery, howsoever caused or arising and the Client specifically indemnifies Creative Care as such.
65. The risk in the goods shall pass to the Client upon the goods being loaded for delivery to the Client's chosen destination.
66. The Client is expected, in all cases, to take such measures as may be reasonable for the purpose of averting or minimising loss or damages and to ensure that all rights against carriers or other third parties are properly preserved and exercised. The carrier shall be deemed to be an agent of the Client, irrespective of which party issued the instructions to or paid the carrier.
67. If goods have to be re-delivered due to refusal to accept delivery or being undeliverable or unclaimed due to incorrect address details provided by the Client or for any other reason due to the Client's action/omission, the Client will be invoiced for any additional delivery costs.
68. The Client must report, by recorded delivery, to the carrier any reservations the Client may have concerning the state of the goods or their packaging, within 24 (twenty-four) hours of the delivery time. A copy of these reservations, including a picture (if possible), must be sent to Creative Care within the same time frame. In the absence of notice accordingly, the Client shall be deemed to have received and have accepted the goods in good order and condition as dispatched, delivered and invoiced by Creative Care
69. The Client is expected to inspect the goods on delivery and to verify specifications and quantity. Goods may not be returned, and deliveries may not be refused except by prior arrangement with Creative Care. If any goods sold to the Client do not accord with

specifications, the Client shall notify Creative Care in writing immediately upon the defect becoming known to the Client and, provided the Client does so within 24 (twenty-four) hours from the time of delivery of the defective goods to the Client.

70. Creative Care may, at its discretion, replace any goods which were sold by Creative Care directly to the Client and which goods are not in accordance with Creative Care's specifications.
71. Unless the Client's order specifically states a date on or before which delivery is required and such date or any other delivery date is accepted by Creative Care in writing, orders will be accepted for delivery as and when goods can be made available by Creative Care. The time of delivery shall not be of the essence of the contract and the Client shall not be entitled to cancel any agreement of sale should Creative Care fail to deliver the goods on the agreed date.
72. PAXI is provider of choice. Depending on the service type chosen, delivery can take between 3 to 7 Business Days. For delivery to outlying or rural areas (60km or more from a main centre), the service can take 7 to 10 Business Days.
73. Read and understand PAXI terms and conditions:
74. [PAXI - The most affordable way to send, collect & return parcels at PEP](#)

#### **Errors**

75. Creative Care takes all reasonable efforts to accurately reflect the description, availability, purchase price and delivery charges of products on the Website. However, should there be any errors of whatsoever nature on the Website (which are not due to our gross negligence), we shall not be liable for any loss, claim or expense relating to a transaction based on any error, save – in the case of any incorrect purchase price – to the extent of refunding you for any amount already paid, or otherwise as set out in the Returns agreement below.

#### **Returns**

76. Any returns or replacements for incorrect goods should be initiated in writing by the Client, in no more than Five (5) days from receiving the order. Any complaint received after the five (5) day mark will not be investigated.
77. Valid refunds shall be processed within 30 (thirty) days from acceptance of the return by Creative Care.
78. No returns accepted for products that are used
79. It is the Client's responsibility to ensure that goods are returned to a agreed collection point in their original packaging
80. All requests for returns or credit must be initiated in writing by the Client. No items may be returned or exchanged unless prior written authorisation has been obtained from Creative Care.
81. Any goods returned at the Client's request may be returned by carriage which expense will be paid for by the Client.
82. Creative Care may replace any goods which were sold by Creative Care directly to the Client and which goods are not in accordance with specifications, or alternatively (provided that the goods have not been damaged in any way whatsoever subsequent to it being dispatched or delivered to the Client, as the case may be), at Creative care's option, Creative Care shall be entitled to take the goods back, refunding the Client with the purchase price paid or by way of credit in favour of the Client.