



ARTIST ADMIN

TERMS OF ENGAGEMENT

1. INTRODUCTION

The Client's receipt of this document, signature below or acceptance of any Artist Admin quotation indicates the Client's explicit and/or tacit consent to the terms of engagement listed below and any schedules, appendices or annexure attached from time to time ("the Agreement"). Nothing contained herein constitutes a partnership, joint venture, employer/employee agreement or the like between the parties.

2. DURATION AND TERMINATION

2.1. This Agreement will commence on acceptance of the quote/estimate and continue until the Services in relation to the Project have been rendered in full, subject to the Agreement being terminated earlier in accordance with clause 2.1 below.

2.2. The Agreement will terminate in the event that:

2.2.1. the parties mutually agree in writing to terminate the Agreement;

2.2.2. or in the case of a retainer, one party gives the other party no less than 30 (thirty) calendar days' written notice of termination; or

2.2.3. either party becomes entitled to cancel the Agreement in pursuant to an unremedied breach of the Agreement.

2.3. Upon termination for any reason:

2.3.1. at the request of the Client, and upon full payment by the Client of the final invoice described below, Artist Admin shall promptly return or otherwise dispose of as the Client may instruct, all samples, patterns, pamphlets, catalogues, advertising material, specifications, circulars, brochures, applications, publications, prints, artworks and any other materials, documents and papers whatsoever in the possession of Artist Admin and relating to its business; and

2.3.2. Artist Admin shall furnish the Client with a final invoice that will include the Services rendered up prior to the date of termination and any disbursement or third-party costs incurred. The Client understands that the final invoice will include any reasonable loss Artist Admin has suffered from the cancellation of the Services.

3. SERVICES

3.1. Artist Admin will provide the services according to the project brief provided by the Client verbally and/or confirmed in written correspondence, and as described in Annexure A ("the Services").

3.2. The Client understands that Artist Admin may require certain information, equipment or action from the Client in order to properly render the Services. Failure or delay in providing this action will lead to delays in provision of the Services, for which Artist Admin shall not be held liable.

4. CLIENT GENERAL OBLIGATIONS

4.1. The Client undertakes to Artist Admin in relation to the Services and the Agreement that it will:

4.1.1. pay each invoice timeously and in full;

4.1.2. provide the contact details of an employee with decision-making authority who will attend to all correspondence from Artist Admin;



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- 4.1.3. provide Artist Admin with clear, timeous and reasonable instructions and directions, where necessary and requested by Artist Admin;
- 4.1.4. where required to give its consent or approval, shall not unreasonably withhold or delay such consent or approval; and
- 4.1.5. not do anything or allow any act to be done which does or is reasonably and foreseeably likely to prejudice the good name and reputation of Artist Admin.

5. PAYMENT

- 5.1. The Client agrees to pay Artist Admin the fee agreed to in the amount presented and/or indicated in an estimate, or quote ("**the Fee**") or in Annexure B, if applicable, according to the terms therein.
- 5.2. If Client is not able to make payment on these terms, then alternative terms are to be agreed to in writing and added to the/an annexure.
- 5.3. Artist Admin retain sole ownership of any and all software and intellectual property created for the Client until such time that the Client has made payment for the Services in full and completed their responsibilities as set out in this Agreement, after which full ownership shall pass to the Client.
- 5.4. If the Client is not able to make payment as agreed to, the Client shall inform Artist Admin of such breach in writing before the 10th (tenth) of the new billing month or 15 (fifteen) working days before the scheduled payment date, or as soon as reasonably possible. At this point Artist Admin holds the rights to withdraw any and all work, which has not been paid for without negotiation or any potential recourse.
- 5.5. The Fee is subject to change, should the Services be altered in any way after commencement. Artist Admin will provide a quote or estimate for the Services as varied, which additional sum will be added to the Fee.
 - 5.5.1. If the Client does not accept the new quote, Artist Admin is not obliged to carry out the varied services.
- 5.6. If Artist Admin has outlaid any monies to any third-party contractor or supplier for the purposes of completing the Services and the Services are terminated, the Client will still be expected to settle the amount outstanding with the contractor or supplier in full, or settle any cancellation fee incurred by Artist Admin.

6. CONFIDENTIAL INFORMATION

- 6.1. "**Confidential Information**" means all disclosed information and materials, whether marked as confidential or not and of any nature or form, including without limitation, all information:
 - 6.1.1. relating to the prospective agreement as a whole; and
 - 6.1.2. relating to any design, process, drawing, photograph, sketch, physical or digital sample, technique, material combination, trade secret, know-how, idea, information, intellectual property rights, marketing idea, business method, pricing plan and strategy, supplier, manufacturer, research, or any combination used, possessed, owned and/or being developed by Artist Admin that is being presented to the Client during all formal or informal prospective agreement discussions.
- 6.2. The Confidential Information may not be used by the Client for any purpose or be disclosed by the Client to another party without Artist Admin's express prior written permission.



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- 6.3. If the Confidential Information is used by the Client for any purpose other than in connection with working with Artist Admin or is disclosed by the Client to another party, this will cause Artist Admin to suffer, amongst other things, loss of goodwill, damages and material financial loss.
- 6.4. The parties agree that a claim for monetary damages pursuant to a breach of this agreement would be an adequate remedy. The parties further agree that when calculating the damages suffered as a result of a breach of this agreement, any lost goodwill and non-patrimonial prejudices suffered shall be taken into account.

7. **FORCE MAJEURE**

It is agreed that neither party shall be liable for delay or failure to perform any obligations contained herein if such delay is due to acts of god, fire, earthquake, labour dispute, war, martial law, interruption of transport, government order, electrical load-shedding or surges, riot, revolution, outbreak of epidemic, pandemic or other widespread diseases or any other cause beyond the reasonable control of the parties.

8. **DATA PROCESSING**

- 8.1. Artist Admin understands and agrees that it may, during its provision of the Services, operate as a “**processor**” and/or “**operator**” of personal information, as defined in the *Protection of Personal Information Act, 2013* (“**POPI**”) and/or the EU’s *General Data Protection Regulation, 2017* (“**GDPR**”) respectively.
- 8.2. Accordingly, Artist Admin warrants that it shall adhere to all applicable duties and obligations of a “processor” and/or “operator” as defined and required under POPI and/or the GDPR respectively, as applicable, when processing any personal information, it derives from the Client and/or its data subjects, pursuant to its provision of its Services.
 - 8.2.1. Further, both parties expressly indemnify the other party against any third-party claims which may be brought against either party for the party’s failure to adhere to their duties as prescribed under GDPR/POPIA related to their role as either or both the relevant data controller and/or processor.
- 8.3. Artist Admin is also aware that the Client is not necessarily the “**Responsible Party**” and/or the “**Data Controller**”, as defined by POPI or GDPR respectively, when processing the personal data of its customers or clients, and as such, the Developer may be required to engage a third party to ensure that its duties under POPI and/or the GDPR are satisfied.
- 8.4. Should the Client have any additional particular terms and conditions relating to how exactly the Developer must process personal information provided to it by the Company, same additional conditions of processing must be contained in a distinct Data Processing Agreement between the parties.
- 8.5. Artist Admin also warrants to the Client that they have no criminal convictions or judgments recorded against them which relates to crimes relating to fraud, unlawful use of personal information or any crime related to illegal use or processing of personal information in any way,
- 8.6. Artist Admin also understands and agrees that for data continuity and risk-mitigation purposes, should this agreement be terminated for any reason, and unless otherwise provided for in another data processing agreement between them and the Client, Artist Admin will immediately cease all processing of personal data provided to them by the Client, as well as permanently delete/destroy any personal data of the Client’s on/within their systems. To assist each other in this process, the Client will provide the Developer with whatever information or tools are needed in order to action this destruction as required.



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9. INTELLECTUAL PROPERTY RIGHTS

- 9.1. The parties shall not:
 - 9.1.1. use, acquire or have any claim to the ownership of any of the marks, brand names, signs, symbols, emblems, devices, slogans and other intellectual property of the other party, other than with their prior written consent; and
 - 9.1.2. do or commit to be done any act which is calculated to jeopardise the continued validity and enforceability of each party's rights in respect this Agreement.
- 9.2. All rights, title and interest in all to all copyrights, patents, trade secrets, trademarks, trade names, and all other intellectual property rights in and to any and all ideas, concepts, techniques, inventions, processes, technology, applications, methods, procedures, products, design getup and works of authorship including, but not limited to, all materials in written or other tangible form developed or created by Artist Admin in carrying out its obligations under the Agreement shall vest exclusively in Artist Admin, unless specifically created and paid by the Client, in which case only the ownership in the final Project shall pass to the Client, subject to this Agreement.
- 9.3. The Client will have no ownership or claim of any rights of any nature over any content created for but not used by the Client as part of the final product of the Project.
- 9.4. Artist Admin retains the right to use any intellectual property created for the Project for its own promotion in any medium or public space in perpetuity once the Project is released to the public, unless otherwise agreed upon in writing.

10. INDEMNITY

- 10.1. Without prejudice to any of the rights of Artist Admin at law or in terms of any other provision of this Agreement, the Client indemnifies Artist Admin against all actual and contingent losses, liabilities, damages, costs (including legal costs on the scale as between attorney and own client and any additional legal costs) and expenses of any nature whatsoever which Artist Admin may suffer or incur as a result of or in connection with:
 - 10.1.1. the provision of the Services;
 - 10.1.2. the negligent acts or omissions of the Client, its employees, agents, representatives (whether or not authorised) and/or sub-contractors in providing the services, including but not limited to spelling, design or grammatical errors after the Client has accepted the final Project;
 - 10.1.3. the utilisation by Artist Admin of the services of any third-party suppliers in the course of providing the Services;
 - 10.1.4. the breach by the Client of the Agreement;
 - 10.1.5. any claim by a third party (including employer, employee, prospective employer and employee, partner, director or anyone) that the submission of his or her information to Artist Admin breaches such person's rights to privacy or confidentiality, or any other rights;
 - 10.1.6. any contracts, commitments, statements, acts, omissions and/or representations made on behalf of Artist Admin by the Client other than in terms of and in accordance with the provisions of the Agreement; or
 - 10.1.7. any reduction in Client sales and/or any sales figures or targets not met (unless specifically agree to in writing). The Client understands that Artist



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Admin does not guarantee any increase in revenue, online visibility or social followers.

- 10.2. Each party warrants to the other that any information, including but not limited to, images, online content, documents or designs provided to a party in connection with the Services is free from any copyright and does not infringe upon any rights of any third party to which the information belongs and/or each party has obtained all required permissions and paid all fees related to any copyrighted material or licenses, from the lawful copyright owner.

11. RETURN OF CLIENTS PROPERTY

Upon or at any time prior to the Termination Date at the request of the Client, Artist Admin shall promptly return to the Client or otherwise dispose of as they may instruct, all samples, patterns, pamphlets, catalogues, advertising material, specifications, circulars, brochures, applications, publications, prints, artworks and any other materials, documents and papers whatsoever in the possession of Artist Admin and relating to their business.

12. NON-SOLICITATION

- 12.1. The Client will not directly contact or attempt to contract any of Artist Admin's suppliers or sub-contractors or in any way attempt to circumvent Artist Admin by procuring any item or service in respect of the Services directly from any of the suppliers or sub-contractors during and for a period of 6 (six) months after the completion of the Services.
- 12.2. The Client understands that any breach of this provision, or any attempt to contract any of Artist Admin's suppliers or sub-contractors directly, will cause financial damage to Artist Admin. In the event of a breach of clause 12 and notwithstanding Artist Admin's other remedies in law, the Client will pay Artist Admin a referral fee of 50% (fifty percent) of the total fee paid to that supplier or sub-contractor.

13. DISPUTE RESOLUTION

- 13.1. Should any dispute, disagreement or claim arise between the parties (called hereafter "**the dispute**") concerning this Agreement, the parties shall endeavour to resolve the dispute by negotiation. This entails one of the parties inviting the other in writing to meet and to attempt to resolve the dispute within 14 (fourteen) days from date of the written invitation.
- 13.2. If the dispute has not been resolved by such negotiation within 14 (fourteen) days thereof by agreement between the parties, then the parties shall submit the dispute to arbitration to be administered by the Arbitration Foundation of Southern Africa ("**AFSA**"), upon such terms as agreed between the parties and the secretariat of the AFSA.

14. BREACH

- 14.1. Should either party commit a breach of any of the material provisions of this Agreement and fail to remedy that breach within 7 (seven) business days after receipt from the non-defaulting party of written notice calling upon the defaulting party so to do, then the party aggrieved by that breach shall be entitled, in addition to and without prejudice to any right it may have as a result of that breach, either to:
- 14.1.1. enforce specific performance of the terms hereof; or
- 14.1.2. cancel the Agreement,
- and recover such damages as it may have sustained.



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- 14.2. The parties' remedies shall not be exhaustive and shall be in addition and without prejudice to any other remedies they may have, whether for damages or otherwise.
- 14.3. The defaulting party shall be liable for all costs and expenses incurred as a result of or in connection with the default.
- 14.4. The parties both agree that in no circumstance will either party publicize the dispute on any public platform, including social media platforms. The parties understand that publicity of this nature can cause serious damage to the other party, which damage may result in a financial claim.
15. **GENERAL**
- 15.1. **Domicilium Citandi et Executandi:** Each of the parties choose *domicilium citandi et executandi* for the purposes of the giving of any notice, the payment of any sum, the serving of any process and for any other purposes arising from the Agreement at their respective addresses set out in the Agreement or on an invoice.
- 15.2. **Survival of Rights, Duties and Obligations:** Termination of the Agreement for any because whatsoever shall not release either party from any liability which at the time of termination has already accrued to the other or which thereafter may accrue in respect of any act or omission prior to such termination.
- 15.3. **Variation:** Neither party shall be bound by any representation, express or implied term, warranty, promise or the like not recorded herein or reduced to writing and signed by the parties or their duly authorised representatives. No addition to, variation, 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.
- 15.4. **Indulgences:** No indulgence which either party may grant to the other shall constitute a waiver of any of the rights of the grantor.
- 15.5. **Invalidity:** All provisions of this Agreement and any schedule or appendix hereto shall be independent of each other and deletion from or the invalidity of any such provision or schedule shall not affect the remainder of this Agreement.
- 15.6. **Conflict:** In the event of any conflict between the terms and conditions of this Agreement and the terms and conditions of any of the annexures hereto, as they may be revised from time to time, the provisions of this Agreement shall prevail.
- 15.7. **Severability:** If any provision hereof is held to be illegal, invalid or unenforceable for any reason, such provision shall be deemed to be *pro non scripto*, but without affecting, impairing or invalidating any of the remaining provisions of this Agreement which shall continue to be of full force and effect.
- 15.8. **Successors in Title:** Without prejudice to any other provision of this Agreement, any successor-in-title, including any executor, heir, liquidator, judicial manager, curator or trustee, of either party shall be bound by this Agreement.
- 15.9. **Governing Law:** The Agreement shall be governed by and interpreted in accordance with the law of the Republic of South Africa. All disputes, actions and other matters in connection with the Agreement shall be determined in accordance with such law.

ANNEXURE A - THE SERVICES: SHIPPING

1. INTRODUCTION

It is recorded that Artist Admin is solely facilitating the shipment(s) on behalf of the Client with third party service providers. Artist Admin is not a shipping company and shall utilise the services of preferred third-party service providers.

2. COLLECTION

- 2.1. Collection of the Client's shipment(s) shall occur, as agreed to between the party, as follows:
 - 2.1.1. The Client's shipment shall be collected by Artist Admin, alternatively Artist Admin's preferred third party service provider, from an address as provided by the Client to Artist Admin; or
 - 2.1.2. Artist Admin shall require that the Client deliver the shipment to an address as stated by Artist Admin from time to time.
- 2.2. It is Artist Admin's sole discretion whether collection shall occur in accordance with clauses 2.1.1 or 2.1.2.

3. SHIPPING ADDRESS

- 3.1. The Client warrants that the physical address provided to Artist Admin is the correct address and that the Client or their chosen representative shall be present at the address to receive the delivery.
- 3.2. Neither Artist Admin nor its third-party service providers shall be held liable for any associated costs arising from the incorrect shipping address being provided by the Client and/or by the Client or their chosen representative not being present at the address to receive the delivery as warranted in clause 3.1.

4. INSURANCE

- 4.1. It is specifically recorded that Artist Admin is not an insurance company and does not provide insurance-related services.
- 4.2. Artist Admin may facilitate insurance policies on behalf of the Client for the shipment(s).
- 4.3. The Client understands that insurance of the shipment is not included in the quotation or invoice unless specifically agreed to by Artist Admin.

5. WARRANTY

- 5.1. The Client shall warrant that the information regarding the shipment including but not limited to the value of the goods contained in the shipment have been fully and accurately disclosed to Artist Admin.
- 5.2. Any costs, fees, or fines associated with the shipment(s) due to any inaccuracy, including but not limited to negligence or wilful intent, with the information referred to in clause 5.1. will be paid for by the Client. Neither Artist Admin nor its third-party service providers shall not be held liable for any costs, fees, or fines.
- 5.3. In the event of any inaccuracy, including but not limited to negligence or wilful intent, with the information referred to in clause 5.1, Artist Admin shall not be obliged to perform the Services.
- 5.4. The Client indemnifies and holds harmless Artist Admin of any associated reputational damage and/or economic loss arising in the event of clause 5.2 and 5.3 above.

6. **PROHIBITED ITEMS AND SPECIALISED SHIPPING**

6.1. The Client warrants to not include any items as listed below in the shipment(s) and to inform Artist Admin if any of the items included in the shipment(s) require specialised shipping as listed below.

PROHIBITED ITEMS



Explosives



Inflammable articles



Corrosive products



Environmentally hazardous goods



Combustion agents



Pressurized gas



Toxic, irritant articles



Sensitizers, narcotics



Mutagens, carcinogens, reprotoxics



Aerosols



Perishable foods

SPECIALISED SHIPPING REQUIRED



Perfumes



Lithium batteries



Cosmetics

6.2. In the event that specialised shipping is required, Artist Admin may vary the Fee, if necessary.

ANNEXURE B - THE FEE: SHIPPING

1. INTRODUCTION

In addition to the payment terms set out in the terms of engagement, these terms shall apply when Artist Admin provides shipping services.

2. THE FEE

2.1. Artist Admin shall provide the Client with an invoice monthly before the 10th day of the month containing the Applicable Fees which may include but are not limited to the following fees:

- 2.1.1. Monthly Account Holder Fees;
- 2.1.2. Ecommerce Store Management;
- 2.1.3. Inbox Management;
- 2.1.4. Packaging Fees;
- 2.1.5. Frame Order Management; and
- 2.1.6. Print Order Management.
- 2.1.7. Fumigation Order Management
- 2.1.8. Basic Admin Tasks
- 2.1.9. Mid-level Admin Tasks
- 2.1.10. Print Costs
- 2.1.11. Framing Costs

3. PAYMENT

3.1. Artist Admin shall only provide its Services upon payment of the Fee as set out in the quote or estimate provided to its ad hoc Clients by Artist Admin.

3.1.1. “**ad hoc Clients**” shall mean Clients who do not currently hold an account number with Artist Admin and only engage with their Shipping Services on an ad hoc and/or COD basis. Unless expressly stated otherwise, “Client” shall include ad hoc Clients.

3.2. Artist Admin shall provide its Services upon acceptance of the Fee as set out in the quote or estimate provided to its account Clients.

3.2.1. “**account Clients**” shall mean any Client who currently holds an account with Artist Admin. Account Clients shall maintain a 30-day account with Artist Admin. Unless expressly stated otherwise, “Client” shall include account Clients.

3.3. The quote is subject to change and Artist Admin shall provide the Client with a final invoice.

3.4. The Client shall only make payment upon receipt of Artist Admin’s final invoice.

4. VARIATION OF THE FEE

4.1. The quote or estimate is based on the information provided by the Client. If the Client provides inaccurate information including but not limited to the actual dimensions, weight, and size which results in excess then the Client shall be liable for the difference from the quote to the final invoice.

4.2. The quote or invoice shall not include any insurance policy unless specifically agreed to by Artist Admin.

4.3. The quote shall not include any associated customs, duties, taxes, or shipping cost and fees associated with the shipment including but not limited to return to sender scenarios.

4.3.1. The Client agrees to settle the amounts referred to in clause 4.3 directly with Artist Admin's third-party service provider.