





1. DEFINITIONS

In these Terms and Conditions, the following terms shall have the following meanings:

“Charges”:	the charges payable by the Client for the Services as specified in the Contract or, if not specified in the Contract, as set out in the Quotation.
“Client”:	the company or other entity which has entered into a Contract with VisionTEK (Pty) Ltd for the provision of Services
“Client Materials”:	documentation, reference material and other material that the Client provides to VisionTEK (Pty) Ltd in order for VisionTEK (Pty) Ltd to be able to provide, or otherwise in connection with, the Services.
“Contract”:	has the meaning given to it in clause 2.2.
“Expenses”:	the third-party costs and expenses as are specified in a Contract, or which are reasonably and necessarily incurred by VisionTEK (Pty) Ltd in connection with the Services (including, without limitation, travel and subsistence expenses, online penalties, courier fees or any other as stipulated by VisionTEK (Pty) Ltd).
“Order”:	an order from the Client for the provision of Services, which may be in such form and medium as VisionTEK (Pty) Ltd may from time to time accept.
“Price List”:	the price list agreed by VisionTEK (Pty) Ltd and the Client for the Services or, if no such price list has been agreed, VisionTEK (Pty) Ltd 's then standard price list.
“VisionTEK (Pty) Ltd” (hereafter referred to as VisionTEK):	whose registered office is at 4 Gantouw ave, Strand, Cape Town, Western Cape, South Africa. VisionTEK (Pty) Ltd 2019/228640/07

2. QUOTATIONS AND CONTRACTS

- 2.1 Unless stated otherwise each written quotation issued by VISIONTEK remains open for acceptance for 30 days.
- 2.2 The Client's written approval or payment of the said deposit is acceptance of a quotation and constitutes an Order which is subject to acceptance by VISIONTEK in accordance with clause 2.3. By payment of the deposit or signed written agreement the Client acknowledges and agrees to these here Terms and Conditions.
- 2.3 A contract between VISIONTEK and the Client for the provision of Services is formed on the acceptance by VISIONTEK of an Order (a “Contract”). Each Contract incorporates these Terms and Conditions, the Client Materials, and any document(s) expressly referred to herein or in the Order. A Contract may only be modified in writing by duly authorized representatives of VISIONTEK and the Client. Any standard or pre-printed terms and conditions contained on the Client's purchase order, invoice or other document shall have no effect and shall not apply to the Contract.
- 2.4 Each Contract constitutes the entire agreement between the parties with respect to the provision of Services, provided that nothing in this clause shall limit or exclude the liability of either party for fraud or fraudulent misrepresentation.
- 2.5 Estimates and quotations sent out by VISIONTEK have been prepared according to the requirements requested by the client. Should any changes to the brief be required, the quotation may need to be amended accordingly.
- 2.6 Work will only commence once a confirmation of 50% deposit has been received. The remaining 50% shall become due when the work is completed to the client's reasonable satisfaction.

- 2.7 For quotations Under R750 – settlement for work completed will be due upon presentation on invoice after delivery.
- 2.8 For quotations Over R750 – Once the required items within this quotation have been accepted by the client, VisionTEK will generate an invoice for a deposit of 50% of the total quoted amount for items chosen for which payment is required before commencement of any work. The remaining 50% of the total quoted amount for items chosen will be required upon completion of work.
- 2.9 The 50% deposit nor settlement is only refundable if 1) we have not fulfilled our obligations to deliver the work required. 2) the work has been started and (within 7 days) the client terminates the contract through no fault of ours. The client has not been communication with VisionTEK for more than 3 months, VisionTEK will then void the contract with no refunds.
- 2.10 Should work in progress be suspended for one month or longer or cancelled due to reasons not applicable to VisionTEK, the final invoice fee must be settled in full within 7days since final invoice has been sent. Any further work needed to complete the site/artwork will be charged at an hourly rate.

3. SERVICES

- 3.1 Subject to the following provisions of this clause 3, VISIONTEK undertakes that:
- (a) it will exercise reasonable skill, care and diligence in carrying out the Services; and
 - (b) it will use all reasonable endeavours to meet any date(s) for completion of the Services specified in a Contract, provided that VISIONTEK shall not be liable for any delay caused by the Client (including, without limitation, any failure or delay by the Client to provide any Client Materials, or any errors or omissions in the Client Materials).
- 3.2 Unless another method is specified in a Contract, VISIONTEK will send all work to the Client by email at the Client's sole risk.
- 3.3 The Client shall ensure that all Client Materials:
- (a) are of a sufficient quality and integrity to enable VISIONTEK to provide the Services;
 - (b) do not infringe any third party's copyright or other intellectual property rights;
 - (c) are not defamatory or otherwise libellous; and
 - (d) do not breach any other law, statute, ordinance or regulation.
- The Client agrees to indemnify VISIONTEK against any loss, liability, damage, cost and expense (including reasonable legal fees and expenses) incurred by VISIONTEK in connection with claims made or brought against VISIONTEK by a third party alleging that the Client Materials, or the use thereof by VISIONTEK (i) infringe the copyright or other intellectual property rights of any person, or (ii) are defamatory or otherwise libellous.
- 3.4 The Client agrees to indemnify VISIONTEK against any loss, liability, damage, cost and expense (including reasonable legal fees and expenses) incurred by VISIONTEK in connection with claims made or brought against VISIONTEK by a third party alleging that the Client Materials, or the use thereof by VISIONTEK (i) infringe the copyright or other intellectual property rights of any person, or (ii) are defamatory or otherwise libellous.
- 3.5 On acceptance of the work by VISIONTEK and the deposit paid, consultation will take place in regard of the scheduling of the work. Once the work has been placed on VISIONTEK schedule It is the client's responsibility to ensure that all client materials which are required by VISIONTEK reaches VISIONTEK before the scheduled date. If no date was scheduled, the default schedule is 3 months after deposit was received. If there is any

delay caused by the client by not supplying the required materials to VISIONTEK, the deposit will be forfeited and VISIONTEK will have the right to invoice the client for time lost of scheduled work not performed due to client's delay. In such a case the work may be rescheduled for a future date and the client may be invoiced again for such work completed by VISIONTEK.

- 3.6 As work commences VISIONTEK will require feedback from clients in regard of work acceptability and completion. Clients have five (5) working days (unless otherwise negotiated and agreed upon by VISIONTEK and the client) to inform VISIONTEK of changes required on work. If the five (5) working days elapse with no feedback from the client VISIONTEK will have the right to accept that the client is satisfied and that the work is completed, VISIONTEK will then issue the client with an invoice for the completed work, any changes to work after this invoice is issued will be for the cost of the client.
- 3.7 All Client Materials provided to VISIONTEK by the Client will be held or dealt with by the Company at the Client's risk, and the Client is solely responsible for ensuring that such Client Materials are insured against loss or damage while in VISIONTEK custody. VISIONTEK reserves the right to destroy or otherwise dispose of any Client Materials which have been in VISIONTEK custody for more than three months following completion of the Services to which they relate.
- 3.8 Should work in progress be suspended for one month or longer or cancelled due to reasons not applicable to VisionTEK, the final invoice fee must be settled in full. Any further work needed to complete the site/artwork will be charged at an hourly rate.
- 3.9 Client is obligated to supply all materials and information required to complete the work. If there is a deadline, and there is a delay in supplying these materials to us, we have the right to extend any previously agreed deadline by a reasonable amount. Where you fail to supply materials, and that prevents the progress of the work, we have the right to invoice you the full projects work.
- 3.10 All design proofs must be confirmed by email before proceeding to development or print.
- 3.11 All items quoted are inclusive of amendments up to Draft 3 (i.e. three sets of changes) that will be made in line with the requirements of the signed off quotation. Any major deviation from the specification will be charged at an hourly rate.
- 3.12 When additional changes or amendments are required by the client over and above the inclusive sets of changes, VisionTEK will advise the client of any additional charges which will be quoted on at an hourly rate and above this quotation.
- 3.13 If we are working on a website, and the website work has been completed, we will provide you with an opportunity to access the website. If you require any amendments that are within the original scope, we will make the changes. However, VisionTEK is not responsible for errors from third party software. Any significant changes will require additional funding to complete the requirements.
- 3.14 You agree to reimburse us for any requested expenses which do not form part of our proposal including but not limited to the purchase of templates, third party software, stock photographs and fonts.

4. PRICES AND PAYMENT

- 4.1 VISIONTEK shall invoice the Client for a deposit of 50% of total quotation. This deposit is non-refundable.
- 4.2 VISIONTEK shall invoice the Client for the remainder of the Charges and any Expenses (together with VAT at the then applicable rate) on completion of the Services, provided that, where Services take {or are reasonably expected to take} more than 30 days to complete, VISIONTEK shall be entitled to issue interim invoices.
- 4.3 Unless other payment terms are specified in a Contract, the Client shall pay each invoice issued by VISIONTEK on receipt of the invoice. If the Client requests that VISIONTEK invoices a third party in respect of any Services and such third party fails to pay the invoice by the due date, VISIONTEK is entitled to reissue the invoice to the Client and the Client shall pay such invoice in full on receipt.
- 4.4 For the avoidance of doubt, the Client is not entitled to delay payment of an invoice issued by VISIONTEK as a result of any failure or delay in payment by the Client's own client or customer, even where the Client has notified VISIONTEK that the Services are being provided for the benefit of such client or customer.
- 4.5 In the event of a bona fide dispute, the Client shall pay the disputed invoice (or, if applicable, the disputed part of the invoice) within 7 days of the dispute being resolved in VISIONTEK's favour.
- 4.6 If the Client fails to pay an undisputed and overdue invoice within 30 days of receiving a written notice from VISIONTEK, then VISIONTEK reserves the right:
 - (a) to suspend or terminate some or all services to the client including the services of webhosting and any other outsourced service rendered to the client.
 - (b) to charge interest at the rate of 2% per month on the outstanding balance from the due date up to the actual date of payment on all unpaid invoices.
 - (c) After 60 days of non-payment of said invoice the account will be handed over for debt collection, the client will be liable for all consequential debt collection and or legal fees.
- 4.7 Please note that VisionTEK is currently not VAT registered; therefore, prices will be quoted and charged for ex VAT.

5. CONFIDENTIALITY

VISIONTEK will keep information and documentation entrusted to it confidential, apart from information which VISIONTEK knew prior to its engagement by the Client without any obligation of confidentiality, or information which enters the public domain other than through the fault of VISIONTEK, or where VISIONTEK is required to disclose such information as a result of a binding order from an authority of competent jurisdiction.

6. DATA PROTECTION

- 6.1 VISIONTEK will at all times adhere to the protection of personal information act 2013:
<http://www.justice.gov.za/inforeg/docs/InfoRegSA-POPIA-act2013-004.pdf>
- 6.2 The parties acknowledge that the provision of the Services may require processing of personal data on behalf of the Client by VISIONTEK.
- 6.3 VISIONTEK undertakes that in relation to any personal data that it processes on behalf of the Client it shall process such personal data only in accordance with the protection of personal information act 2013.

7. NON-SOLICITATION

The Client agrees that it will not, at any time prior to the date falling twelve (12) months after the date of completion of the Services, solicit, directly or indirectly, the services of any employee or former employee of VISIONTEK or of any subcontractor of VISIONTEK who has at any time been involved with the provision of Services.

8. CANCELLATION AND POSTPONEMENT

- 8.1 If the Client notifies VISIONTEK that it wishes, for any reason, to postpone or cancel any Services, VISIONTEK may (at its discretion) agree to such postponement or cancellation, subject always to the Client paying all Charges which have accrued and all Expenses that have been incurred up to the date of cancellation or postponement (as applicable).
- 8.2 VISIONTEK shall be entitled to terminate a Contract with immediate effect and without liability if it reasonably believes that the Client is or may be in breach of clause 3.4.

9. LIABILITY

VISIONTEK shall not be liable, whether in negligence, for breach of contract, misrepresentation or otherwise, for any indirect or consequential loss, damage, expense or cost of any kind suffered or incurred by the Client.

10. DISPUTE RESOLUTION

VISIONTEK and the Client agree that any disagreements about the quality of the Services shall be referred to an arbitrator to be agreed and appointed by the parties or, if the parties fail to agree, to approach the courts of the Republic of South Africa.

11. FORCE MAJEURE

In the event of natural or unnatural disasters (which shall include strike, fire, industrial dispute, civil commotion, natural disaster, acts of war and any other situation which can be shown to have materially affected Two Fishes Design ability to undertake and complete the Services as agreed), VISIONTEK shall notify the Client as soon as it becomes aware of such event, indicating the circumstances. An event of natural or unnatural disaster shall entitle either VISIONTEK or the Client to terminate the Contract with immediate effect, subject to the Client paying VISIONTEK for all Services completed and Expenses incurred up to the date of termination. VISIONTEK shall not be liable for the consequences of non-performance or any delay in completion or delivery of Services as a result of natural or unnatural disasters.

12. ASSIGNMENT AND SUBCONTRACTING

- 12.1 Neither party shall assign its rights or obligations under a Contract without the prior written consent of the other party.
- 12.2 VISIONTEK is entitled to subcontract some or all of the Services, provided that VISIONTEK shall remain solely responsible for the acts and omissions of its subcontractors.

13. WAIVER

The waiver by either party of a breach or default of any of the provisions of a Contract by the other party shall not be construed as a waiver of any succeeding breach of the same or other provisions, nor shall any delay or omission on the part of either party to exercise or avail itself of any right, power or privilege that it has or may have hereunder operate as a waiver of any breach or default by the other party.

14. JURISDICTION

Each Contract is governed by the Law of the Republic of South Africa and VISIONTEK and the Client irrevocably submit to the nonexclusive jurisdiction of the Law of the Republic of South Africa and its Courts, provided that nothing in this clause shall prevent VISIONTEK from taking legal action against the Client in any jurisdiction in which the Client carries on business.