

THE MEDIA PEOPLE'S TERMS

The Media People CC (THE MEDIA PEOPLE)

THE MEDIA PEOPLE's Terms in their prevailing form from time to time (THE MEDIA PEOPLE's Terms) are applicable to all business dealings (including those with Customers) and all agreements.. The prevailing THE MEDIA PEOPLE Terms are available at www.themediapeople.co.za.

1.1 DEFINITIONS

The following terms shall in all agreements to which THE MEDIA PEOPLE is a party have the meanings assigned to them hereunder and cognate expressions shall have corresponding meanings

ABSA	ABSA Bank Limited
Business Day	any day other than a Saturday or Sunday or a proclaimed public holiday in South Africa
Customer	THE MEDIA PEOPLE's customer
Documentation	THE MEDIA PEOPLE's Terms, Customers' orders, THE MEDIA PEOPLE's notifications of receipt of and acceptance of orders, proof of payment for orders, invoices and delivery notes issued by THE MEDIA PEOPLE
THE MEDIA PEOPLE	The Media People cc - Registration Number 2006/017719/23
THE MEDIA PEOPLE's Terms	THE MEDIA PEOPLE's terms and conditions as prevailing from time to time and as available at www.themediapeople.co.za
Parties	the Customer and THE MEDIA PEOPLE (and Party - the Customer or THE MEDIA PEOPLE)
Product	the products and services as referred to in any Documentation or whatever products and services have been sold by THE MEDIA PEOPLE to a Customer including all materials
Quotation	quotation, tender, price list or other offer to contract
South Africa	the Republic of South Africa

1.2 INTERPRETATION

The following interpretation provisions shall apply to all agreements to which THE MEDIA PEOPLE is a party.

- The headings in THE MEDIA PEOPLE's Terms and/or any agreement entered into by THE MEDIA PEOPLE are for convenience only and shall not be deemed part of THE MEDIA PEOPLE's Terms and/or any agreement entered into by THE MEDIA PEOPLE nor shall they be taken into consideration in the interpretation or construction thereof.
- Words importing the singular only also include the plural and vice versa where the context requires.
- Words denoting any gender shall include all genders.
- Words importing persons shall include firms, partnerships, corporations, joint ventures and any organisation having a legal personality.
- If figures are referred to in numerals and words, the words shall prevail in the event of any conflict between the two.
- Where a number of days is prescribed such number shall be reckoned exclusively of the first and inclusively of the last day.
- Where the day upon or by which any act is required to be performed is not a Business Day, the Parties shall be deemed to have intended such act to be performed upon or by the first Business Day thereafter.
- Reference to any person or public organisation shall include the successors (statutory or otherwise) and permitted assignees or successors in title of such person or public organisation or to any organisation or entity which has taken over the functions or responsibilities of such public organisation irrespective of whether such assignment or succession occurred before or after the date of THE MEDIA PEOPLE's Terms and/or any agreement entered into between the Parties.
- References to Terms, agreements, documents or other instruments include (subject to all relevant approvals) a reference to Terms and any agreement, document or instrument as amended, supplemented, substituted, ceded or assigned.
- Where an expression has been defined (whether above or elsewhere in THE MEDIA PEOPLE's Terms and/or any agreement entered into by THE MEDIA PEOPLE) and such definition contains a provision conferring rights or imposing obligations on any Party, effect shall be given to that provision as if it were a substantive provision contained in the body of THE MEDIA PEOPLE's Terms and/or any agreement entered into by THE MEDIA PEOPLE.
- The rule of construction that an agreement shall be interpreted against the party responsible for the drafting or preparation of an agreement shall not apply.
- Words of inclusion are not words of limitation.
- The expiration or termination of THE MEDIA PEOPLE's Terms and/or any agreement entered into by THE MEDIA PEOPLE shall not affect such of the provisions of THE MEDIA PEOPLE's Terms and/or any agreement entered into by THE MEDIA PEOPLE as expressly provide that they will operate after any such expiration or termination or which of necessity must continue to have effect after such expiration or termination, notwithstanding that the clauses themselves do not expressly provide for this.
- Trade terms shall where appropriate, and where not consistent with the provisions of any agreement, be interpreted in accordance with the International Rules For the Interpretation of Trade Terms of the International Chamber of Commerce.

2 OVERRIDING EFFECTS

THE MEDIA PEOPLE's Terms shall apply without alteration or variation and shall have the effect of specifically excluding any terms howsoever stipulated, incorporated or referred to by any Customer including without limitation terms stipulated, incorporated or referred to in any negotiations, Quotation, order, invoices, statements or other documents. Terms and conditions of the Customer shall, unless otherwise specifically agreed in writing by a duly authorised representative of THE MEDIA PEOPLE, have no application whether or not they conflict with THE MEDIA PEOPLE's Terms.

3 APPLICATION TO FUTURE CONTRACTS AND DEBTS

- In the absence of express written agreement to the contrary, THE MEDIA PEOPLE's prevailing Terms shall apply to any future sales by THE MEDIA PEOPLE to any Customer.
- THE MEDIA PEOPLE's Terms shall be applicable to all debts which the Customer may owe to THE MEDIA PEOPLE.

4 INTELLECTUAL PROPERTY AND COPYRIGHT

- All intellectual property rights associated with Product vest in THE MEDIA PEOPLE and/or its suppliers. Notwithstanding anything provided for in any agreement, the Customer undertakes to refrain from doing anything or causing anything to be done which infringes upon THE MEDIA PEOPLE's (and/or its suppliers') intellectual property rights, including but not limited to patent, trade mark, trade name and copyright.
- The Customer acknowledges and will be bound by all copyright vested in THE MEDIA PEOPLE. The Customer shall not duplicate copyrighted material whether on websites or otherwise without the prior written permission of THE MEDIA PEOPLE. THE MEDIA PEOPLE shall in its sole discretion be entitled without notice to withdraw any permission granted.
- The Customer indemnifies THE MEDIA PEOPLE and holds THE MEDIA PEOPLE harmless in respect of any and all claims by any third party whomsoever for any breach by the Customer of the provisions of this clause.
- In circumstances of THE MEDIA PEOPLE designing and constructing a web site for a Customer, THE MEDIA PEOPLE shall retain all copyright in relation to the design and construction of a Customer's website but grants the Customer an irrevocable and perpetual non exclusive licences to use such design and construction.

5 OWNERSHIP OF SOFTWARE

- THE MEDIA PEOPLE retains all title to, and full ownership of, all software including (without limitation) all source and object codes.
- The Customer agrees not to permit the use of any software by any unauthorised persons.
- The Customer must not disassemble, reverse compile or reverse engineer any software or take any action in order to derive any source code equivalent of any Software.
- The Customer must not copy any parts of any software, except for the purpose of making a reasonable number of internal back-up or archival copies only.

- 5.5 The Customer must not modify any Software without the prior express written approval of THE MEDIA PEOPLE.
- 5.6 The Customer must not allow or assist any person to do or attempt to do any act prohibited under this clause or any other clause of this Agreement.
- 6 HOSTING SERVICES**
Where THE MEDIA PEOPLE offers and Customer accepts Web or Email hosting services through THE MEDIA PEOPLE, the provision of such services by THE MEDIA PEOPLE shall be subject to the Standard Terms and Conditions of the relevant service provider and Customer agrees to be bound by all such terms and conditions.
- 7 PRINTING SERVICES**
Where THE MEDIA PEOPLE offers and Customer accepts printing services through THE MEDIA PEOPLE, the provision of such services by THE MEDIA PEOPLE shall be subject to the Standard Terms and Conditions of the relevant service provider and Customer agrees to be bound by all such terms and conditions.
- 8 PRICE LISTS**
THE MEDIA PEOPLE price lists and other THE MEDIA PEOPLE publications and websites are for information only, do not constitute or form part of any Quotation or Documentation and constitute merely a guide to Customers. THE MEDIA PEOPLE reserves the right to vary the prices of Product from time to time.
- 9 QUOTATIONS, OFFERS, ORDERS AND INVOICES**
- 9.1 THE MEDIA PEOPLE shall be bound by quotations for a period of no more than 14 days.
- 9.2 THE MEDIA PEOPLE shall only be bound by an order upon written acceptance - signed by a duly authorised representative of THE MEDIA PEOPLE - of a written order and payment by the Customer to THE MEDIA PEOPLE of the amount due in respect of such order.
- 9.3 All orders are accepted by THE MEDIA PEOPLE subject to and on the basis of THE MEDIA PEOPLE's Terms. THE MEDIA PEOPLE may at its sole election chose to rely upon oral orders or oral variations to orders. THE MEDIA PEOPLE will not be responsible for any errors or misunderstandings occasioned by the Customer's failure to make the order or any variation thereof in writing.
- 9.4 Orders constitute irrevocable offers to purchase Product at THE MEDIA PEOPLE's usual prices as at the date when the Customer places the order for Products or Services.
- 9.5 Orders accepted by THE MEDIA PEOPLE shall not be varied or cancelled by the Customer, except with the written consent of a duly authorised THE MEDIA PEOPLE representative.
- 9.6 THE MEDIA PEOPLE shall be entitled to require that the Customer provide THE MEDIA PEOPLE with an order number when placing an order.
- 9.7 The Documentation constitutes the complete and exclusive statement of the purchase agreement.
- 9.8 The Customer shall be bound by the invoice issued by THE MEDIA PEOPLE detailing Product ordered and bought and the price thereof.
- 10 PAYMENT**
The Customer shall pay for Product/Services according to the following:
- 10.1.1 Any printed material, 50% payment on signing of colour proof and balance outstanding to be paid on delivery C.O.D
- 10.1.2 Any digital, creative design work, web based, multimedia or other related production, 50% payment on signing of quotation and balance outstanding to be paid on delivery of material (or loading of web site – going live) C.O.D
- 10.1.3 Any media placement, radio, TV, print or other, 85% payment on signing of quotation and balance outstanding to be paid on delivery date of materials C.O.D
- 10.1.4 Any other products, to be printed on or not, 50% payment on signing of colour proof and balance outstanding to be paid on delivery C.O.D
- 10.2 If the Customer uses a postal or similar service to effect payment, such service provider shall be deemed to be the agent of the Customer. If the Customer uses Internet banking or effects electronic transfer of monies, the bank shall be deemed to be the agent of the Customer.
- 10.3 THE MEDIA PEOPLE may appropriate and/or allocate all payments made by the Customer to such accounts as THE MEDIA PEOPLE may in its sole and absolute discretion decide.
- 10.4 Any party owing any monies to THE MEDIA PEOPLE shall, under no circumstances, set off and/or deduct any amount from amounts due to THE MEDIA PEOPLE without the prior written authority of THE MEDIA PEOPLE.
- 11 NEGOTIABLE INSTRUMENTS**
Acceptance of a negotiable instrument offered by the Customer shall not be deemed to be a waiver of THE MEDIA PEOPLE's rights under any agreement. In relation to cheques furnished by the Customer to THE MEDIA PEOPLE, the Customer waives its right to insist on notice of dishonour or protest being given to it in the event that the cheque is dishonoured.
- 12 DELIVERY**
- 12.1 Time shall not be of the essence of agreement or delivery of any Product and/or Service. Delivery dates and times are approximate and are dependent on prompt compliance by the Customer with all the Customer's obligations. THE MEDIA PEOPLE shall make every endeavour to ensure that delivery is made timeously, but THE MEDIA PEOPLE shall not be liable in any manner whatsoever for delivery failures or delays.
- 12.2 THE MEDIA PEOPLE shall be entitled to effect part deliveries.
- 12.3 THE MEDIA PEOPLE shall be entitled to effect deliveries through a carrier of THE MEDIA PEOPLE's choice. Any third party effecting delivery including a postal or similar service chosen by the Customer or THE MEDIA PEOPLE to deliver or return Product shall be deemed to be the agent of the Customer.
- 12.4 Delivery of Product (including Product being either returned or subsequently redelivered) between THE MEDIA PEOPLE and the Customer shall be at the risk of the Customer.
- 12.5 If execution of any order or agreement is delayed without fault on THE MEDIA PEOPLE's part
- 12.6 THE MEDIA PEOPLE shall be entitled to a reasonable extension within which to execute that order or agreement;
- 12.6.1 any additional costs incurred by THE MEDIA PEOPLE including the costs of preparation and handling for storage, inspection, demurrage, interest, insurance and any other charges occasioned by the delay of delivery shall be for the Customer's account; and
- 12.6.2 the risk of loss of or damage to such Product shall pass to the Customer if it has not so passed.
- 12.6.3 A delay shall be deemed to have been caused without fault on THE MEDIA PEOPLE's part if it is due to default or request on the part of the Customer or to any circumstances which THE MEDIA PEOPLE cannot reasonably and practicably control in the normal conduct of its business including any act of God, fire, flood, drought, war, civil disturbance, riot, state of emergency, strike, lock out or other labour dispute or unrest, legislation, import control, shipping and other transport delays and default on the part of any manufacturer or supplier.
- 12.7 The provisions of this 12 shall apply notwithstanding that a previous delay may have occurred for any other reason.
- 12.8 The Customer shall be responsible for receiving, unloading and checking the Product upon delivery (whether at the Customer's premises or elsewhere) in the presence of the party effecting the delivery. Any delivery note signed by the Customer or by anyone else at the agreed place of delivery, shall be prima facie proof that the Product listed thereon has been delivered in good condition and free of defects. In the event of shortages in or damage to Product included in a delivery and/or in the event of any Product being in a defective state, the Customer shall notify THE MEDIA PEOPLE thereof in writing within 24 hours of that delivery and any delivery note must upon delivery be endorsed by the Customer accordingly. Unless this action (both notification and endorsement) has been taken Product will be deemed to have been delivered to the Customer in perfect condition, claims will not be recognised and THE MEDIA PEOPLE's liability will be limited accordingly.
- 12.9 Any delivery note (copy or original) in the possession of THE MEDIA PEOPLE, and purportedly signed by the Customer and/or its authorised representative and/or its nominated agent, shall be *prima facie* proof that delivery was made to the Customer and shall upon production constitute *prima facie* proof of delivery including for the purposes of any litigation.
- 13 RETURNED GOODS (PRODUCT OR SERVICES)**
THE MEDIA PEOPLE is under no obligation to accept return of Product. THE MEDIA PEOPLE may at its option repair or replace, or refund a proportionate share of the price in respect of, any defective Product against return of the Product concerned in which event any defective Product which is replaced by agreement shall become THE MEDIA PEOPLE's property.
- 14 WARRANTIES AND ACCEPTANCE, LIMITATION OF LIABILITY AND INDEMNITIES**
To the maximum extent permitted by all applicable laws and save as provided herein, THE MEDIA PEOPLE disclaims any warranties, express or implied, in relation to any software or any services, including but not limited to any implied warranties of merchantability or fitness for a particular purpose, more particularly
- 14.1 THE MEDIA PEOPLE does not warrant that any software or/and website will
- 14.2 be uninterrupted or error free in operation;

- 14.3 contain no defects;
- 14.4 meet the Customer's requirements; or
- 14.5 be compatible, or operate in any combination with, Customer's equipment and other software programs which may be selected for use by the Customer.
- 14.6 if the Customer does not in writing within thirty (7) days from the date of delivery notify THE MEDIA PEOPLE that any software and/or website is performing in substantial accordance with its published user documentation the Customer will be deemed to have accepted such software and/or website
- 14.7 neither THE MEDIA PEOPLE nor any of THE MEDIA PEOPLE's suppliers, associate and subsidiary companies, members, officers, employees or agents shall be liable for
- 14.7.1 any damage arising from any misuse of the Product;
- 14.7.2 any specialist or unusual requirements of the Customer other than those stipulated in writing in the Customer's order as accepted in writing by THE MEDIA PEOPLE;
- 14.7.3 any negligent or innocent misrepresentations made to a third party including the Customer and such third party including the Customer shall not be entitled to cancel any agreement with THE MEDIA PEOPLE on such grounds;
- 14.7.4 any claims arising out of, or in connection with, any defects in, or unsuitability of Product;
- 14.7.5 any loss or damage of any description suffered by a third party including the Customer arising from any cause whatsoever in connection with any agreement or Product or the use thereof, whether such loss or damage results from breach of contract (whether fundamental or otherwise), delict, negligence or any other cause and whether the agreement is cancelled or not;
- 14.7.6 any liability of THE MEDIA PEOPLE under THE MEDIA PEOPLE's Terms shall only be in respect of defects in Product existing before delivery to the Customer;
- 14.8 THE MEDIA PEOPLE's liability in respect of Product and the supply thereof shall at THE MEDIA PEOPLE's election
- 14.8.1 not exceed the cost of Product supplied in response to a specific order.
- 14.8.2 be limited to replacing the defective Product provisions;
- 14.9 THE MEDIA PEOPLE shall not incur any liability whatsoever of whatever nature and howsoever arising (including whether in contract or delict) for any injury, loss or damage to any person or property arising from the use of the Product.
- 14.10 Every party to an agreement with THE MEDIA PEOPLE unconditionally and irrevocably indemnifies and holds THE MEDIA PEOPLE and THE MEDIA PEOPLE's suppliers, associate and subsidiary companies, subcontractors, members, officers, employees or agents (THE MEDIA PEOPLE Parties) harmless against all and any claims, loss, liability, damage, cost, expense, fine, penalty or interest of whatsoever nature and howsoever arising and of whatsoever nature that may be brought or threatened against THE MEDIA PEOPLE or its employees by any third party arising from or in connection with
- 14.10.1 any defect, latent or otherwise in any Product supplied by THE MEDIA PEOPLE;
- 14.10.2 the failure of such party or its members, employees, agents, servants, representatives, contractors, or any other persons for whom such party may be liable in law, to comply with its obligations under any agreement with THE MEDIA PEOPLE.
- 14.11 An indemnifying party in terms of THE MEDIA PEOPLE's Terms or any agreement entered into by THE MEDIA PEOPLE shall be obliged to effect payment under any indemnity as soon as any loss, liability or damage of the nature aforesaid has been incurred or sustained by THE MEDIA PEOPLE.
- 14.12 Should any claim be made by any third party against which THE MEDIA PEOPLE is indemnified in terms of this clause, the indemnifying party shall be entitled to defend the action (where necessary in the name of THE MEDIA PEOPLE) and to control the proceedings in regard thereto, provided that the indemnifying party shall first have indemnified THE MEDIA PEOPLE to THE MEDIA PEOPLE's reasonable satisfaction against all and any costs which may be incurred in resisting any such claim as aforesaid.
- 14.13 If THE MEDIA PEOPLE rejects liability in writing for defective Product after being duly notified thereof in accordance with the provisions of THE MEDIA PEOPLE's Terms, the Customer's right to pursue litigation in relation to such defective Product against THE MEDIA PEOPLE or THE MEDIA PEOPLE's suppliers shall prescribe six months after the date on which such liability was rejected by THE MEDIA PEOPLE.
- 14.14 Any failure by the Customer to comply with the provisions of THE MEDIA PEOPLE's Terms and/or any agreement entered into by THE MEDIA PEOPLE shall relieve THE MEDIA PEOPLE of all and any further liability whatsoever.
- 15 BREACH, AND TERMINATION**
- 15.1 THE MEDIA PEOPLE may terminate the use of any software products, agreement and any services immediately by notice in writing to the Customer if the Customer commits any material breach of these terms and/or any Agreement and fails to rectify such breach within ten (10) days of written notice from THE MEDIA PEOPLE to do so.
- 15.2 If the Customer fails to pay any fees due, THE MEDIA PEOPLE may, at its discretion terminate all services and/or web and email hosting services.
- 15.3 In circumstances of termination of web hosting services, howsoever
- 15.3.1 all display and retention of the Customer's historical data will be forfeited.
- 15.3.2 THE MEDIA PEOPLE shall be
- 15.3.2.1 absolved of all responsibility whatsoever in relation to the Customer's data, web site and web hosting;
- 15.3.2.2 indemnified by the Customer in respect of
- 15.3.2.2.1 all claims of whatsoever nature which may be brought by any third parties against THE MEDIA PEOPLE in respect of Customer's data, web site and web hosting, email; and
- 15.3.2.2.2 all reasonable costs incurred by THE MEDIA PEOPLE in relation to such claims; and
- 15.3.2.3 entitled to terminate all Web Hosting Services in relation to and other service.
- 15.4 On termination of the product or service and/or this Agreement howsoever occurring
- 15.4.1 the Customer must immediately cease to use and destroy all copies of all software and all associated documentation in its possession or control;
- 15.4.2 THE MEDIA PEOPLE's obligation to provide any services whatsoever shall cease;
- 15.4.3 the Customer will not be entitled to any refund of any service, product or fees paid;
- 15.4.4 the service granted under this Agreement will immediately terminate; and
- 15.4.5 THE MEDIA PEOPLE shall bear no further responsibility whatsoever in relation to any software, products or services.
- 16 GOVERNING LAW, JURISDICTION AND LEGAL PROCEEDINGS**
- 16.1 THE MEDIA PEOPLE's Terms and any agreement entered into by THE MEDIA PEOPLE and all modifications and amendments thereof, shall be governed by and decided upon and construed under and in accordance with the laws of South Africa.
- 16.2 Any party entering into an agreement with THE MEDIA PEOPLE agrees to submit to the jurisdiction of South African courts having jurisdiction in respect of Johannesburg and/or Cape Town.
- 16.3 THE MEDIA PEOPLE shall in relation to THE MEDIA PEOPLE's Terms and any agreement entered into by THE MEDIA PEOPLE, at its option and notwithstanding that the amount of its claim or the nature of the relief sought by it exceeds the jurisdiction of the Magistrate's Court, be entitled to institute action out of such court.
- 16.4 A certificate in relation to THE MEDIA PEOPLE's Terms and any agreement entered into by THE MEDIA PEOPLE issued and signed by any director or manager of THE MEDIA PEOPLE, whose authority need not be proved, in respect of any indebtedness of any party that has entered into an agreement with THE MEDIA PEOPLE or in respect of any other fact, including the fact that such goods were sold and delivered, shall be *prima facie* proof of the customer's indebtedness to THE MEDIA PEOPLE and *prima facie* proof of delivery of the goods in terms any agreement with a Customer.
- 16.5 Any printout of computer-generated information tendered in evidence by THE MEDIA PEOPLE shall be admissible evidence and any party to an agreement with THE MEDIA PEOPLE shall not be entitled to object to the admissibility of such evidence on the grounds that such evidence is computer evidence or hearsay evidence or that such evidence or document is not original.
- 16.6 In the event of any party to an agreement with THE MEDIA PEOPLE breaching any of its obligations and/or failing to make payment of any amount due to THE MEDIA PEOPLE timeously, such party agrees to pay, and shall be liable to pay, all legal costs incurred by THE MEDIA PEOPLE in enforcing its rights in terms of THE MEDIA PEOPLE's Terms and/or any agreement entered into with THE MEDIA PEOPLE the Parties on the attorney/own client scale including collection charges, tracing agent's fees, air fares and expert's fees.
- 17 DOMICILIA AND NOTICES**
- 17.1 THE MEDIA PEOPLE chooses *domicilia citandi et executandi* for all purposes as Suite 031, Longkloof Studios, Darters Road, 123 Hope Street, Gardens, 8001 South Africa
- 17.2 The *domicilia citandi et executandi* chosen in writing by a party to an agreement with THE MEDIA PEOPLE, or in the absence of such written choice of *domicilia citandi et executandi* the most recent physical address furnished to THE MEDIA PEOPLE by a party to an agreement with THE MEDIA PEOPLE, shall be recognised as that party's *domicilium citandi et executandi* (domicilium) for all purposes of any agreements between THE MEDIA PEOPLE and that party, whether in respect of the serving of any Court process, notices, the payment of any amount or communications of whatever nature.



- 17.3 Any notice required or permitted under **THE MEDIA PEOPLE's** Terms or any agreement entered into with **THE MEDIA PEOPLE** shall be valid and effective only if in writing. All notices, correspondence, documentation or communications of whatsoever nature including without limitation drawings, reports, certificates and specification which are to be given, submitted or prepared under or in connection with **THE MEDIA PEOPLE's** Terms and/or any agreement entered into by **THE MEDIA PEOPLE** shall be in English.
- 17.4 Any notice to a party under **THE MEDIA PEOPLE's** Terms or any agreement entered into with **THE MEDIA PEOPLE** and contained in a correctly addressed envelope and delivered by hand to a responsible person during ordinary business hours at such party's chosen *domicilia citandi et executandi*, shall be deemed to have been received on the date of delivery;
- 17.4.1 posted by prepaid registered mail to such party's chosen *domicilia citandi et executandi*, shall be deemed to have been received within 10 (ten) Business Days of the date of posting thereof.
- 17.4.2
- 17.5 Notwithstanding anything to the contrary contained in this clause, a written notice or communication actually received by a party under **THE MEDIA PEOPLE's** Terms or any agreement entered into with **THE MEDIA PEOPLE** shall be an adequate written notice or communication to such party, notwithstanding that such notice was not delivered at such party's chosen its chosen *domicilia citandi et executandi* and shall be deemed to have been received on the date of delivery.
- 17.6 Any party may under **THE MEDIA PEOPLE's** Terms or any agreement entered into with **THE MEDIA PEOPLE** by notice to another other party change its chosen *domicilia citandi et executandi* to another physical address in South Africa.
- 18 FORCE MAJEURE**
- 18.1 No party to an agreement with **THE MEDIA PEOPLE** including **THE MEDIA PEOPLE** shall be responsible or liable for any delay or non-performance of its obligations directly caused by or resulting from Acts of God including major accident, fire or flood; sabotage or any officially declared state of emergency; embargoes, boycotts, strikes, lockouts; restrictions imposed by any Government or Governmental authority; or without limitation, any other cause of a force majeure nature beyond the reasonable control of a party, which prevents any performance.
- 18.2 Any party affected by any of the conditions referred to in 18.1 above shall give the other party/ies written notice of the existence of such condition within 5 (five) Business Days of its existence being discovered.
- 18.3 No party shall be entitled to rely on the provisions of 18.1 above unless it has given notice as envisaged in 18.2 above.
- 18.4 In the event of the force majeure situation continuing for a period of more than 2 (two) calendar months after the giving of the notice referred to in 18.2 above any party including **THE MEDIA PEOPLE** shall be entitled to terminate any agreement entered into between the parties by giving written notice to that effect to the other party in which event no party shall be liable to any other party for damages as a result of the force majeure.
- 19 GENERAL**
- 19.1 entire agreement**
- 19.1.1 The Documentation in relation to any particular order constitutes the entire agreement between **THE MEDIA PEOPLE** and the Customer in relation to that order.
- 19.1.2 Any agreement between the **THE MEDIA PEOPLE** and another party/ies embodies and constitutes the entire and sole agreement between the parties as to the subject matter thereof and the latest agreement on any particular matter shall prevail and any prior or contemporaneous agreements between such parties with respect such a matter shall be of no further effect and force. No party shall be bound by any express or implied term, representation, warranty, promise or the like not recorded in an agreement. A party entering into any agreement with **THE MEDIA PEOPLE** (including **THE MEDIA PEOPLE**) shall do so on the basis that such party acknowledges that it has had or, as the case may be, is deemed to have had, full opportunity to include any representation or warranty (if any) made to it by any party in the process leading up to the conclusion of any agreement.
- 19.1.3 No amendment, addition to, deletion, variation or agreed cancellation of any agreement entered into **THE MEDIA PEOPLE** and another party/ies shall be of any force or effect unless in writing and duly signed by or behalf of the parties by an authorised representative and then such addition, variation or agreed cancellation shall be effective only in the specific instance and only for the purpose and to the extent for which made or given.
- 19.2 exclusion of pactum de non potendo**
- All agreements to which **THE MEDIA PEOPLE** is a party are concluded on the basis that the parties to such agreement specifically agree to exclude the defence of pactum de non potendo, whether exercised orally or in writing.
- 19.3 co-operation**
- Parties who have entered into any agreement with **THE MEDIA PEOPLE** (including **THE MEDIA PEOPLE**) undertake at all times to do all such things, to perform all such acts and to take all such steps including without limitation, signing all such documents as may be from time to time be required to give effect to what is intended in any such agreement and to procure the doing of all such things, the performance of all such actions and the taking of all such steps as may be open to them and necessary for or incidental to the putting into effect or maintenance of the terms, conditions and import of such agreement.
- 19.2 rights**
- The respective rights and remedies of any party under any agreement entered into with **THE MEDIA PEOPLE** shall be cumulative, may be exercised as often as the parties consider appropriate and are in addition to their respective rights and remedies in common law.
- 19.3 expiry or termination**
- 19.3.1 The expiry or termination of **THE MEDIA PEOPLE's** Terms and/or any agreement entered into with **THE MEDIA PEOPLE** shall not prejudice the rights of any party thereto in respect of any antecedent breach or non-performance by any party of any of the terms or conditions thereof.
- 19.3.2 No party to any agreement with **THE MEDIA PEOPLE** (including **THE MEDIA PEOPLE**) shall have any rights or remedies against the other party on termination save for the rights and remedies specified in the relevant agreement, provided that in cases where a remedy other than termination is sought, the provisions of this clause shall not detract from such other rights or remedies as may be available to a party to law.
- 19.4 waivers**
- 19.4.1 The rights and remedies of the parties to any agreement with **THE MEDIA PEOPLE** (including **THE MEDIA PEOPLE**) whether arising under an agreement or in common law shall not be capable of being waived or varied otherwise than by an express waiver or variation in writing duly executed by an authorised representative of the relevant party, and shall be strictly construed and effective only in the specific instance and for the sole purpose and only to the extent expressly granted, and shall not operate so as to preclude a party from exercising its rights strictly in accordance with an agreement.
- 19.4.2 No waiver, variation, relaxation, suspension, indulgence, condemnation, leniency or extension of time made or given by any party in respect of any provision of any agreement entered into between **THE MEDIA PEOPLE** and another party/ies or in common law, or of any arising rights and remedies or failure to exercise or enforce any provisions of any agreement shall constitute or operate as
- 19.4.2.1 a waiver of such party's rights whether of a like or different character nor shall any single or partial exercise of any such power, right or remedy preclude any other or further exercise thereof nor the exercise of any other power, right or remedy of such party nor affect in any way such parties' (including **THE MEDIA PEOPLE**) right to require the performance of such provision at any time in the future, nor shall a waiver of a subsequent breach nullify the effectiveness of the provision itself;
- 19.4.2.2 an estoppel against any party in respect of its rights under **THE MEDIA PEOPLE's** Terms and/or any agreement entered into between the parties.
- 19.5 cession and assignment**
- 19.5.1 No party to an agreement with **THE MEDIA PEOPLE** (excluding **THE MEDIA PEOPLE**) may cede its rights nor assign its obligations under such agreement unless **THE MEDIA PEOPLE** agrees in writing to such cession and/or assignment.
- 19.5.2 **THE MEDIA PEOPLE** shall at any time in its sole discretion be entitled to cede all or any of its rights in terms of any agreement to any third party without prior notice to the Customer.
- 19.6 change of address and/or information**
- 19.6.1 The Customer undertakes to notify **THE MEDIA PEOPLE** within 5 (five) Business Days of any change of address or any changes in the information that the Customer has furnished to **THE MEDIA PEOPLE**.
- 19.6.2 Any party to any agreement with **THE MEDIA PEOPLE** shall be obliged to inform **THE MEDIA PEOPLE** in writing at least 10 (ten) Business Days prior to any intended selling or alienating of the whole of or any part of that party's business and a failure to do so will constitute a material breach of each and every agreement between the Customer and **THE MEDIA PEOPLE** entitling **THE MEDIA PEOPLE** to cancel any such agreements without further notice to the party.
- 19.7 no expectation of renewal**
- A party that has entered into an agreement with **THE MEDIA PEOPLE** shall not be entitled to assert any expectation of renewal of any such agreement.
- 19.8 severability**

- 19.8.1 If any one or more of the provisions of **THE MEDIA PEOPLE's** Terms and/or any agreement entered into by **THE MEDIA PEOPLE** is or becomes declared or adjudged (formally or informally) by competent authority to be invalid, unenforceable, defective or illegal for any reason whatsoever then
- 19.8.1.1 the remaining terms and provisions of **THE MEDIA PEOPLE's** Terms and/or any agreement entered into between parties shall be deemed to be severable therefrom and shall continue in full force and effect unless such invalidity, unenforceability, defect or illegality goes to the root of **THE MEDIA PEOPLE's** Terms and/or any term of any such agreement;
- 19.8.1.2 **THE MEDIA PEOPLE's** Terms and any agreement thus continuing shall (subject and without prejudice to any appeal to higher authority as to the status of that provision) exclude the offending provision but, if such deletion substantially affects or alters the commercial basis of **THE MEDIA PEOPLE's** Terms and/or any such agreement, then **THE MEDIA PEOPLE's** Terms and any such agreement including such provision shall be amended in such manner as the parties agree which will, while not being void or unenforceable, most nearly achieve the object of the allegedly void or unenforceable provisions.
- 19.8.2 Each of the terms in any agreement entered into by **THE MEDIA PEOPLE**, shall be separate and divisible and if any such term or portion of such term becomes unenforceable for any reason whatsoever, then that term and/or the remaining portion shall be severable and shall not affect the validity of the other terms or of any agreement as a whole.
- 19.9 **disclosure of personal information**
- 19.9.1 **THE MEDIA PEOPLE** has the Customer's consent at all times to contact and request information from any persons, credit bureaux or businesses and to obtain any information which **THE MEDIA PEOPLE** considers relevant to the Customer's credit assessment.
- 19.9.2 The Customer agrees and understands that information pertaining to the Customer and given in confidence to **THE MEDIA PEOPLE** by a third party will not be disclosed to the Customer.
- 19.9.3 The Customer consents to and authorises **THE MEDIA PEOPLE** at all times to furnish credit information concerning the customer's dealings with **THE MEDIA PEOPLE** to a credit bureau and to any third party seeking a trade reference regarding the Customer in the Customer's dealings with **THE MEDIA PEOPLE**.
- 19.11 **confidentiality**
- 19.11.1 All agreements to which **THE MEDIA PEOPLE** is a party are concluded on the basis that the parties reciprocally undertake to treat as strictly confidential all information of any nature whatsoever which any party may obtain from any other party pertaining to the conclusion or implementation of the provisions of any agreement (the party receiving such information hereinafter referred to as the **Recipient Party** and the party disclosing such information hereinafter referred to as the **Disclosing Party**) howsoever such information may be disclosed to the Recipient Party including, without limiting the foregoing, whether orally, visually or by reason of inspection of documentation or other matter:
- 19.11.2 acknowledge that the aforesaid information would not have been made available to the Recipient Party but for this undertaking;
- 19.11.3 agree not
- 19.11.3.1 to disclose such information to any person whomsoever other than the Recipient Party's employees (which shall include any of its directors or members), agents and/or contractors, on the basis that such information shall, notwithstanding the disclosure thereof as aforesaid, be maintained confidential by such employees, agents or contractors on exactly the same terms and conditions as set out herein; and
- 19.11.3.2 directly or indirectly to use for their benefit or the benefit of any other person such information unless any part of such information is or becomes public knowledge and in the public domain by reason of becoming public property other than through an act or omission on the part of the Recipient Party or the employees, agents and/or contractors contemplated in clause 19.11.3.1;
- 19.11.3.3 make any public disclosures or announcements of any of the matters dealt with in **THE MEDIA PEOPLE's** Terms and/or any agreement entered into between the parties without the prior written consent of the other parties;
- 19.11.4 agree to return to the Disclosing Party, unless it otherwise agrees in writing, all copies of any documents which the Recipient Party may have obtained from as well as all notes or copies of documents concerning it which the Recipient Party may have prepared or which the Recipient Party may obtain as a result of information being made available to it as contemplated herein.
- 19.12 **dispute resolution**
- Without derogating from any party's other rights, between the parties to any agreement entered into by **THE MEDIA PEOPLE** (including **THE MEDIA PEOPLE**), the parties shall endeavour to settle amicably
- 19.12.1 any matter arising out of; or
- 19.12.2 the interpretation of; or
- 19.12.3 the termination of; or
- 19.12.4 any matter arising out of the termination of
- such agreement and any party may send any other party a written invitation to enter into non binding mediation in accordance with the rules of the Arbitration Foundation of Southern Africa in an endeavour to resolve any such dispute.