



## **TERMS & CONDITIONS - SYMBOL MARKETING PTY (LTD)**

SYMBOL MARKETING PTY (LTD) also referred to as Symbol Marketing.

### **DEFINITIONS**

1.1. The word CLIENT means the person, company or companies that Symbol Marketing is and will be supplying products and/or services to, either currently or in future.

1.2. The word DELIVERABLE relates to any individual end product or service provided by Symbol Marketing to the Client.

1.3. The word PROJECT relates to all Deliverables rendered by Symbol Marketing to the Client as part of a certain predefined scope.

1.4. The word RETAINER relates to all Deliverables rendered by Symbol Marketing to the Client as part of an ongoing agreement.

1.5. The word CONSULTANT relates to any personnel of Symbol Marketing.

1.6. The word CONTENT relates to all text, imagery, video or any other elements created or used.

### **FUTURE CHANGES TO THE TERMS & CONDITIONS**

Kindly take note that the terms and conditions hereunder may change without any prior notice whatsoever and that the Client hereby acknowledges and confirms that the Client will revisit the Terms and Conditions page on [www.symbolmarketing.co.za](http://www.symbolmarketing.co.za) or request an electronic copy of the latest agreement. The Client's continued use of Symbol Marketing's services following any such modification constitutes the Client's acceptance of those modified Terms and Conditions.

### **GENERAL**

2. The Client hereby acknowledges, accepts and confirms understanding that:

2.1. All Content generation for projects will be the responsibility of the Client, unless Symbol Marketing is actively involved with the copywriting process and/or licensing stock photos on the Client's behalf.

2.2. Proper licensing and permission have been obtained by the Client for any form of imagery and/or any other resources used within projects.



2.2.1 Symbol Marketing has the right to pause any services until the production of documentary proof is delivered and displayed to Symbol Marketing. The aforementioned proof must be provided to Symbol Marketing within reasonable time.

2.3. It is the responsibility of the Client to provide Content for the purpose of marketing to Symbol Marketing, either electronically or through courier delivery.

2.4. Should the Content be of poor quality and Symbol Marketing is required to make improvements, then the Content preparation costs, billed accordingly, will be incurred by the Client.

2.5. Consultants are only available for communication online via email, zoom, whatsapp, sms or call.

2.6 If any features/products/services are not specifically mentioned as part of a Project or Retainer then the Client should assume that it is not included and should contact Symbol Marketing for confirmation.

2.7 Symbol Marketing reserves the right to refuse services to the Client.

2.7.1 An active Project or Retainer may be cancelled by Symbol Marketing and applicable costs refunded for work not completed; and

2.7.2 All work completed up until cancellation will then be handed over to the Client to conclude the cancellation.

2.8 Symbol Marketing cannot guarantee that any Deliverable is 100% unique worldwide. Symbol Marketing attempts to create original Deliverables, but coincidental similarities with other Deliverables may be unavoidable. Symbol Marketing does not take responsibility for signed off work that may be subject to future trademark or copyright challenges.

2.9. Once a Deliverable, that was specifically created for the Client by Symbol Marketing, has been signed off and approval received, then the source files and exported files will be the copyright of the Client. The Client's use of any Content that is free, open source or Content licensed on behalf of the Client by Symbol Marketing is subject to that Content's individual terms and conditions. The Client agrees to be bound by those Terms and Conditions and may ask for links to those agreements.

## **PROJECTS**

3. The Client hereby acknowledges, accepts, confirms and understands that:



3.1. If Symbol Marketing cannot get hold of the Client through available channels/means of communication or alternatively if the client does not provide any written or verbal feedback within 10 working days, causing the project to stall in any way, then Symbol Marketing will mark the project as dormant and the dormant project will be removed from the active project list.

3.1.1 A 50% cost of the total project invoice will be levied by Symbol Marketing to the Client and must be paid by the Client to reactivate the project in the future.

3.1.2 For monthly or once-off projects, 100% of the total project invoice will be levied by Symbol Marketing to the Client and must be paid by the Client before commencement of project unless otherwise agreed upon.

3.2. If the project is dormant for longer than 3 months, then the project will be terminated and all design source files will be removed from Symbol Marketing's network and database and all costs paid by the Client to Symbol Marketing will be forfeited due to the Clients breach of the terms and conditions without prejudice to any other claims Symbol Marketing may have against the Client for damages.

3.3. If the Client chooses to cancel the project for any reason, then the payment received will not be refundable and shall be accordingly forfeited.

3.3.1 In all project cancellations, the designs and their design versions will stay the copyright and property of Symbol Marketing.

3.3.2 Any copy, distribution or use of these cancelled project assets, by the Client, will constitute a copyright violation and Symbol Marketing reserves its right to take further legal action against the Client for damages suffered in any form whatsoever.

3.3.3 Symbol Marketing may choose to refund parts of a payment under special circumstances.

3.4. Only one meeting with the Client, within a 25km radius of an appropriate consultant, is included as part of a project where the project value is above R3 500.00 (THREE THOUSAND AND FIVE HUNDRED RAND). Any further meetings and/or consultations at any location that constitutes a consultation, the Client will be billed at an hourly consultation rate as agreed upon between Symbol Marketing and the Client. Online consultations incur no additional cost unless otherwise agreed upon.

## **PROJECT CHANGE REQUESTS**

4. The Client hereby acknowledges, accepts and confirms understanding that:



4.1. All projects include change request limits and that a change request is one or many changes, requested by the Client in one request, of, but not limited to, layout, imagery, text or other elements to a previous version of a Deliverable as part of that Project. Change request limits may be lifted on projects where previous written arrangements have been made.

Here are the current change request limits:

#### WEBSITES

- Websites have 2 (two) change request limits unless otherwise agreed upon by Symbol Marketing and the client. This means that the Client will have 2 (two) rounds of revisions consisting of change requests, to their website at no additional cost.
- Failure to meet this limit will result in an hourly rate of R150 per hour to incur for all changes over and above those that were requested during the two (2) revisions.

#### GRAPHIC DESIGNS

- Graphic designed work has 2 (two) change request limits unless otherwise agreed upon by Symbol Marketing and the client. This means that the Client will have 2 (two) rounds of revisions consisting of change requests, to the work at no additional cost.
- Failure to meet this limit will result in an hourly rate of R250 per hour to incur for all changes over and above those that were requested during the two (2) revisions.

#### ADDITIONAL

- Any additional work that requires changes has 2 (two) change request limits unless otherwise agreed upon by Symbol Marketing and the client. This means that the Client will have 2 (two) rounds of revisions consisting of change requests, to the work at no additional cost.
- Failure to meet this limit will result in an additional fee.

It is the duty of the client to ensure that all feedback provided to any person(s) of Symbol Marketing is clear and concise. If a client has any questions, they are welcome to call, whatsapp or email Symbol Marketing for clarity.

4.2. In each Deliverable, where the project change request limit has been reached, the Client may request additional changes at an hourly rate. This hourly rate can be requested by clients from Symbol Marketing.

Once work commences, any changes made and time spent on the project within the 1 (one) hour duration constitutes 1 (one) hour work.



4.3. If individual representatives of the Client submit change requests then each request would count towards the revisions already used. The Client should therefore give combined feedback to avoid wasting revisions.

## **PAYMENTS**

Debtor agrees he/she/it owes Debtee(Symbol Marketing) a customised fee each month, depending on the services rendered.

The Parties agree to the following Payment Plan.

- Invoice will be sent out on 10th and 21st of each month respectively and payment is due on/before but no later than the due date on the invoice unless otherwise agreed upon between parties.
- Proof of payment is required with applicable reference.
- The following defaults will apply if payment is late:
  - One day after the invoice due date, the debtor will get a late payment reminder via one of the following channels - email/message/Whatsapp/verbal communication/phone call - from Symbol Marketing.
  - In the event that debtors are unable to make payment, we offer leniency and they will have a 2 day grace period. These 2 days include weekends.
  - Failure to make payment within two days (2 days) will give Debtee, Symbol Marketing, permission to add a late payment fee of R250.00 per day automatically to the Debtor's invoice or allow Symbol Marketing to deactivate/switch off services until payment is made. In the event of website hosting, clients hosting will be switched off and they will need to pay outstanding invoice and any additional fees that may incur to reactive.
  - If Debtor still fails to make payment after incurring 5 days of the penalty fee, Symbol Marketing reserves the right to take legal action and/or any necessary action seen fit.
  - This legal action/necessary action is dependent on Symbol Marketing.
- In the event of a dispute resulting in legal action, the successful party will be entitled to its legal fees, including, but not limited to its attorneys' fees, collection fees and the like.
- The Parties agree that this Agreement shall be governed by the State and/or Country in which both Parties reside/do business. In the event that the Parties reside/do business in different States and/or Countries, this Agreement shall be governed by universal law.

## **CHARGES**

Charges for services to be provided by Symbol Marketing are defined in the project quotation that the Client receives via e-mail. Quotations are valid for a period of 7 days (this includes weekends). Symbol Marketing reserves the right to alter or decline to provide a quotation after expiry of the 7 days.



Unless agreed otherwise with the Client, all website design services require an advance payment of a minimum of fifty (50) percent of the project quotation total before the work is supplied to the Client for review unless otherwise agreed upon. The remaining fifty (50) percent of the project quotation total is due upon completion of the work, prior to upload to the server or release of materials.

Payment for services is due by bank transfer. No cash will be accepted. Bank details will be made available on invoices.

## **RETAINERS**

5. The Client hereby acknowledges, accepts and confirms understanding that:

5.1. The Retainer is a prepaid, recurring service where hours are bought at an hourly rate.

5.2. The Retainer may initially consist of Phases with a specific scope of Deliverables each. Once these Phases are completed then the Retainer will move into a month to month Growth Phase. The Retainer will automatically renew at the end of each month for another month, unless the Client requests a cancellation.

5.3. Source files and exported file formats of Deliverables may be handed over immediately to the Client once the Client has signed them off.

5.4. Any time that is not used by the end of the month will not be added to the next month's time balance. Symbol Marketing will generally choose to allocate unspent time to the following month if Symbol Marketing is engaged in constant, constructive communication with the Client.

5.5. The Retainer time is only used for time spent by Consultants. It cannot be used for allocating printing costs, advertising budgets, licensing costs or related items. Those would be paid separately to Symbol Marketing or applicable Third Party providers. If the cost of an item is low then Symbol Marketing may decide to allocate its value as time to reduce administration and billing overhead for the Client.

5.6. The Retainer hourly rate may increase over time and the Client will be informed of any increases in advance.

5.7. If a Retainer is cancelled by the Client and the Retainer time balance is in the negative, then the Client needs to settle the balance. Symbol Marketing will generate a final invoice for the outstanding amount and the same will be delivered to the client within a reasonable time.

5.8. A Retainer may be cancelled with a 7 calendar day notice. Symbol Marketing will attempt to allocate any available Retainer time to constructive tasks within those 7 days, assuming constructive Client communication. Any unused time will expire on the last day without refund.



## **CLIENT REVIEW**

Symbol Marketing will provide the Client with an opportunity to review the appearance and content of the website during the design phase and once the overall website development is completed. At the completion of the project, such materials will be deemed to be accepted and approved unless the Client notifies Symbol Marketing otherwise within seven (7) working days of the date the materials are made available to the Client.

## **TURNAROUND TIME AND CONTENT CONTROL**

Symbol Marketing will install and publicly post or supply the Client's website by the date specified, or at date agreed with Client upon Symbol Marketing receiving initial payment, unless a delay is specifically requested by the Client and agreed by Symbol Marketing.

In return, the Client agrees to delegate a single individual as a primary contact to aid Symbol Marketing with progressing the commission in a satisfactory and expedient manner.

During the project, Symbol Marketing will require the Client to provide website content; text, images, movies and sound files and any additional content that might be required.

## **FAILURE TO PROVIDE REQUIRED WEBSITE CONTENT**

Symbol Marketing is a small business, to remain efficient we must ensure that work we have scheduled is carried out at the scheduled time. On occasions we may have to reject offers for other work and enquiries to ensure that your work is completed at the time arranged.

This is why we ask that you provide all the required information in advance. On any occasion where progress cannot be made with your website because we have not been given the required information in the agreed time frame, and we are delayed as a result, we reserve the right to impose a surcharge.

If you agree to provide us with the required information and subsequently fail to do within two weeks of project commencement we reserve the right to close the project and the balance remaining becomes payable immediately.

NOTE: Text content should be delivered as a Microsoft Word, pdf, Google Doc, email (or similar) document with the pages in the supplied document representing the content of the relevant pages on your website.

## **ADDITIONAL EXPENSES**

Client agrees to reimburse Symbol Marketing for any additional expenses necessary for the completion of the work. Examples would be purchase of special fonts, stock photography etc.



## **WEB BROWSERS**

Symbol Marketing makes every effort to ensure websites are designed to be viewed by the majority of visitors. Websites are designed to work with the most popular current browsers (e.g. Firefox, Internet Explorer, Google Chrome, etc.). Client agrees that Symbol Marketing cannot guarantee correct functionality with all browser software across different operating systems.

Symbol Marketing cannot accept responsibility for web pages which do not display acceptably in new versions of browsers released after the website has been designed and handed over to the

Client. As such, Symbol Marketing reserves the right to quote for any work involved in changing the website design or website code for it to work with updated browser software.

## **DEFAULT**

Accounts unpaid five (5) days after the invoice due date will be considered in default. If the Client in default maintains any information or files on Symbol Marketing's Web space, Symbol Marketing will, at its discretion, remove all such material from its web space.

Symbol Marketing is not responsible for any loss of data incurred due to the removal of the service. Removal of such material does not relieve the Client of the obligation to pay any outstanding charges assessed to the Client's account. Clients with accounts in default agree to pay Symbol Marketing reasonable expenses, including legal fees and costs for collection by third-party agencies, incurred by Symbol Marketing in enforcing these Terms and Conditions.

## **TERMINATION**

Termination of services by the Client must be requested in a written notice and will be effective on receipt of such notice. Telephone requests for termination of services will not be honoured until and unless confirmed in writing.

## **INDEMNITY**

All Symbol Marketing may be used for lawful purposes only. You agree to indemnify and hold Symbol Marketing harmless from any claims resulting from your use of our service that damages you or any other party.

## **COPYRIGHT**

The Client retains the copyright to data, files and graphic logos provided by the Client, and grants Symbol Marketing the rights to publish and use such material. The Client must obtain permission and rights to use any information or files that are copyrighted by a third party. The Client is further responsible for granting Symbol Marketing permission and rights for use of the





same and agrees to indemnify and hold harmless Symbol Marketing from any and all claims resulting from the Client's negligence or inability to obtain proper copyright permissions. A contract for website design and/or placement shall be regarded as a guarantee by the Client to Symbol Marketing that all such permissions and authorities have been obtained. Evidence of permissions and authorities may be requested.

### **STANDARD MEDIA DELIVERY**

Unless otherwise specified in the project quotation, this Agreement assumes that any text will be provided by the Client in electronic format and that all photographs and other graphics will be provided physically in high quality format electronically in .gif, .jpeg, .png or .tiff format. Although every reasonable attempt shall be made by Symbol Marketing to return to the Client any images or printed material provided for use in creation of the Client's website, such return cannot be guaranteed.

### **DESIGN CREDIT**

A link to Symbol Marketing will appear in either small type or by a small graphic at the bottom of the Client's website. If a graphic is used, it will be designed to fit in with the overall site design. The Client also agrees that the website developed for the Client may be presented in Symbol Marketing's portfolio.

### **ACCESS REQUIREMENTS**

If the Client's website is to be installed on a third-party server, Symbol Marketing must be granted temporary read/write access to the Client's storage directories which must be accessible via FTP. Depending on the specific nature of the project, other resources might also need to be configured on the server.

### **POST-PLACEMENT ALTERCATIONS**

Symbol Marketing cannot accept responsibility for any alterations caused by a third party occurring to the Client's pages once installed. Such alterations include, but are not limited to additions, modifications or deletions.

### **ADDITIONAL**

These Terms and Conditions supersede all previous representations, understandings or agreements. The Client's signature below or payment of an advance fee constitutes agreement to and acceptance of these Terms and Conditions. Payment online is an acceptance of our terms and conditions.

### **GOVERNING LAW**



This Agreement shall be governed by South African Law.

## **LIABILITY**

Symbol Marketing hereby excludes itself, its Employees and or Agents from all and any liability from:

- Loss or damage caused by any inaccuracy;
- Loss or damage caused by omission;
- Loss or damage caused by delay or error, whether the result of negligence or other cause in the production of the web site;
- Loss or damage to clients' artwork/photos, supplied for the site. Immaterial whether the loss or damage results from negligence or otherwise.
- The entire liability of Symbol Marketing to the Client in respect of any claim whatsoever or breach of this Agreement, whether or not arising out of negligence, shall be limited to the charges paid for the Services under this Agreement in respect of which the breach has arisen.

## **SEVERABILITY**

In the event any one or more of the provisions of this Agreement shall be held to be invalid, illegal or unenforceable, the remaining provisions of this Agreement shall be unimpaired and the Agreement shall not be void for this reason alone. Such invalid, illegal or unenforceable provision shall be replaced by a mutually acceptable valid, legal and enforceable provision, which comes closest to the intention of the parties underlying the invalid.

## **SIGN OFF**

6. The Client hereby acknowledges, accepts and confirms understanding that:

6.1. Sign off is the act where the Client accepts, via email or any other written format that can be stored and archived, a Deliverable as 100% completed to their initial requirement and to their ultimate satisfaction thereof.

6.2. Once the Client gives sign off on a Project or Retainer Deliverable, then that Deliverable is declared and deemed as finalized. Any change requests on a signed off Project Deliverable will be quoted for at an hourly rate. Change requests for Retainer Deliverables are only limited by the amount of time available within the retainer to implement those changes.

6.3. Giving sign off on a Project requires the Client to immediately settle any and/or all outstanding fees, unless other alternate prior written arrangements are in effect and in agreement with Symbol Marketing.



6.4. It is the sole responsibility of the Client to ensure that all aspects of a Deliverable are 100% accurate before giving sign off.

6.5. If signed off artwork contains errors that the Client did not notice, then the resulting implementation costs will be for the Client's account.

6.6. As soon as the Client gives sign off on a Deliverable the Client automatically accepts all liabilities that might arise from the Deliverable as a whole.

## **BACKUPS**

7. The Client hereby acknowledges, accepts and confirms understanding that:

7.1. Symbol Marketing will hand over the source files and standard exported files formats to the Client via email. It is up to the Client to ensure that it is backed up. Symbol Marketing does not offer backup services although it may or may not store it as part of an archiving process.

7.2. Once a website has been set live on the Client's domain then it is up to the Client to ensure that they have regular backups made of the website, either directly or through their hosting company. The Client needs to back up their own email accounts regularly. If the client is hosted with Symbol Marketing, we will ensure regular backups are made accordingly.

7.3. Symbol Marketing does not offer or guarantee backups of Deliverables. Symbol Marketing may choose to store files as part of regular internal archiving processes. It is the Client's responsibility to request copies of important files, if not already provided, and to store it safely.

## **EMAIL AND WEB HOSTING**

This point only applies if the Client is using Symbol Marketing for email, website, domain or related internet hosting.

8. The Client hereby acknowledges, accepts and confirms understanding that:

8.1 Symbol Marketing provides all email, website and related hosting services through XNEELO ([www.xneelo.co.za](http://www.xneelo.co.za)) (Previously known as Hetzner SA). "Symbol Marketing" below refers to the services that Symbol Marketing makes available to the Client through XNEELO's services. Symbol Marketing is dependent on the current state of the XNEELO network and the Terms and Conditions of that company.

8.2 Symbol Marketing reserves the right to block, deactivate or terminate any email and web hosting services due to abuse, non-payment and any reason where offering the service falls outside the original agreement. All Service fees must be paid as soon as they are due.



8.3 A domain, email accounts, website and any associated data will be deleted if payment is not made when due. Symbol Marketing will attempt to request outstanding payment first and then block a domain. If a domain is blocked and no communication regarding payment is received for 10 business days then Symbol Marketing will start the deletion process. Deleted domains would then become available again for registration by any third party.

8.4 If XNEELO notifies Symbol Marketing of any security violations then Symbol Marketing will inform the Client as soon as possible, using the resources available to Symbol Marketing at that time. The Client will be notified via email to take appropriate action such as the changing of passwords. Symbol Marketing will inform the Client using the email address or addresses that it has on record, which may or may not be up to date. The Client would need to take the required actions and contact Symbol Marketing if there are any queries about the action to take.

8.5 The Client indemnifies Symbol Marketing from any liability arising from any civil or criminal proceedings instituted against Symbol Marketing for any loss or damage.

8.5.1. The Client further indemnifies Symbol Marketing for any loss or damages the Client or a third party may suffer because of any interruption, security compromise or unavailability of the services.

8.6 The Client indemnifies Symbol Marketing from being held liable for any and all losses the Client may have suffered or from legal action taken against Symbol Marketing as a result of:

8.6.1 the use of the Services, or any downtime, outage, security violations, degradation of the network, interruption in or unavailability of the Services.

8.6.2 Included within the range of downtime, outage, degradation of the network, interruption, or unavailability of the Services is any of the following:

8.6.2.1 software or hardware service, repairs, maintenance, upgrades, modification, alterations, replacement or relocation of premises affecting the Services, non-performance or unavailability of any of the services given by an electronic communications network or service provider, including, line failure, or in any international services or remote mail Servers, — non-performance or unavailability of external communications networks to which the Client or Symbol Marketing network infrastructure is connected, and repairs, maintenance, upgrades, modifications, alterations or replacement of any hardware forming part of the Services, or any faults or defects in the hardware.

8.7 Symbol Marketing will not be responsible for any breach of the email and web hosting agreement caused by circumstances beyond Symbol Marketing's control, including but not limited to: fire, earthquake, flood, civil strike, compliance with government orders, failure of any supplier of electricity as well as no electronic communication service.



8.8 Symbol Marketing reserves the right to take any action it finds necessary to preserve the security and reliable operation of Symbol Marketing's infrastructure. The Client may not do anything, or permit anything to be done, that will compromise Cognite's security.

8.9 Symbol Marketing has systems in place to assist with its critical technical infrastructure to recover from a natural or human induced disaster.

However, Symbol Marketing does not specify any recovery time and Symbol Marketing is not liable for any loss or damage the Client may suffer as a result of any natural or human induced disaster. The Client must make back-ups of their data. Nothing contained in Symbol Marketing's hosting terms will be seen as a representation that any back-ups of data Symbol Marketing have implemented will be successful or in any way will assist with disaster recovery.

## **REFUNDS**

Should a refund be requested and agreed upon by both parties, Client is to allow 7 - 10 working days for the refund to be processed.

## **CONTACT INFORMATION**

If you have any queries regarding any of our terms and conditions, please contact us.

Email: [info@symbolmarketing.co.za](mailto:info@symbolmarketing.co.za)

Tel: 081 790 1570

Operating Hours: Monday - Friday 09:00 am - 17:00 pm