

Standard Terms and Conditions of Contract

as of 4 June 2008

1. The Proposal

1. The proposal is designed to re-iterate the client's needs and to make sure that the client is satisfied with the proposed development, as well as the terms and conditions stipulated within the proposal and those stipulated by this document.
2. The contents of the proposal are confidential between Blunt Chisel and the client and shall not be divulged to any third party.
3. Any reference made to "the contract" throughout any correspondence between Blunt Chisel and the client will refer to the proposal and any amendments made to the proposal, officially issued by Blunt Chisel and signed in writing by the client.
4. Once signed, the proposal becomes a legal contract between Blunt Chisel and the client and the work stipulated within the contract, no more and no less, subject to the remainder of the terms and conditions in this document, will be carried out.
5. If changes are required to be made to the proposal by the client, the client must fill in those necessary changes as clearly as possible and the altered proposal must be returned. The proposal will then be re-issued, subject to these terms and conditions. Signing of a proposal by a client where changes are required will deem the contract null and void.
6. The signed proposal, or commentary on the proposal, must be received by Blunt Chisel no later than 2 (two) calendar weeks from the date of issue of the proposal. Should said correspondence be received later than 2 (two) calendar weeks from the date of issue, unless otherwise agreed upon in writing, Blunt Chisel reserves the right to refuse the proposal. This will also apply to interim specification refinements and proposal amendments.
7. The contract will become valid on the date the signed, accepted proposal (or amendment(s) or refinement(s) should a proposal already be in effect) is/are received by Blunt Chisel, regardless of the date of the client's signing of the proposal.

2. Services

1. Services shall be rendered subject to the client's acceptance of the terms and conditions of the proposal, the scope of the work, the stipulated development cost, and the duration and commencement of the work.
2. Any materials, software or equipment delivered to the client on behalf of Blunt Chisel after acceptance of the proposal shall be accepted, retained and used at the client's risk. The client will be responsible for insuring the materials, software or equipment.
3. Unless otherwise stated in the proposal, no services will be rendered until all required details and goods, should such details and goods be necessary, have been received in good order from the client and are available at the disposal of Blunt Chisel for their required purpose.

4. The price quoted in the proposal is subject to change based on the following factors: exchange rates (where applicable), alterations in the client's requirements, and unforeseen expenses due to the development.
5. Unless otherwise stated in the proposal, the final product(s), if deliverable in tangible form, will be delivered to the client at the client's expense. This cost will normally be stipulated in the proposal.
6. Ownership of any and all goods shall remain in Blunt Chisel until the client has paid the final invoiced amount in full. The client accepts sole risk and responsibility from the date of delivery.
7. The client will not be entitled to reduce the contract price, amount or scope of work without written consent from Blunt Chisel. If the client reduces the scope of work, the client shall remain liable for the full contract price, unless agreed upon otherwise in writing.

3. Maintenance and Support Contracts

1. Maintenance contracts are available for when small amounts of work are required to be performed on a regular basis. These require a separate contract to the proposal.
2. A maintenance contract is valid for a period of 1 (one) calendar year from the date of signing of that contract, unless otherwise stipulated in the maintenance contract.
3. Maintenance work will only be performed during office hours.
4. A quotation will be generated for maintenance jobs beforehand, which then must be signed and returned to Blunt Chisel.
5. Maintenance work for which a quotation is generated will only commence once the signed quotation is received by Blunt Chisel. Should an up-front payment for said maintenance work be required, the maintenance will not commence until both the up-front payment and the signed quotation are received by Blunt Chisel.
6. Should maintenance work pertain to a project where a proposal was generated by Blunt Chisel, maintenance work will not commence until it is also acknowledged, in writing, that Blunt Chisel has delivered sufficiently to conclude that proposal, and that no further work is required in respect to said proposal.
7. Free technical maintenance will be provided for a period of 6 (six) calendar weeks from the date of completion of a project, unless otherwise agreed upon in writing by both parties. Technical maintenance here is limited to programming, where "programming" here is defined as the generation and alteration of "code" (a language instructing a computer to perform tasks). In such a situation, the following terms and conditions will also apply.
 - (a) Maintenance work will be limited to the alteration of existing code in order to fulfil the basic requirements of the initial contract, regardless of level of usability, user-friendliness, or aesthetic appeal, unless the usability, user-friendliness and/or aesthetic appeal levels are explicitly defined in the initial proposal.
 - (b) Should the code written by Blunt Chisel be altered in any way without the written consent of Blunt Chisel, Blunt Chisel will be exempt of the responsibility of maintenance for the entire project.
8. At least 2 (two) working days will be allowed for Blunt Chisel to respond to a request for maintenance.
9. Should on-site support be required, the client will be responsible for any and all travel and accommodation costs for all Blunt Chisel staff required on site. Details about travel and accommodation costs will be sent to the client prior to provision of said on-site support, and these details are to be signed and sent back to Blunt Chisel prior to commencement of said support.

4. Reports

1. Any and all reports and documents issued by Blunt Chisel are confidential unless both parties agree to disclose such a report or document. No reference may be made to anything within such a report or document without the prior consent of both parties in writing.
2. The final report will be the property of the client and may be published provided that Blunt Chisel is indemnified by the client against any claims for damages that may result from the publication of that report or document.

5. Acceptance of Conditions

Acceptance of the proposal shall be deemed to include acceptance of all the conditions stipulated within this document, and the person accepting the proposal on behalf of the client, where applicable, warrants that he/she is duly authorised so to act on behalf of the client and also warrants that the legal entity of the client is as stipulated in the proposal.

Should it be ascertained that the person signing on behalf of the client was not properly authorised to do so, he/she will be held liable as surety and co-principal debtor in his/her personal capacity for the fulfilment of all the obligations contained herein, and will in his/her personal capacity be bound by all the terms and conditions stipulated herein and within the proposal.

6. Payment

1. Should the proposal stipulate the requirement of an up-front payment, work will not commence until said up-front payment is received by Blunt Chisel in full. Any and all delays as a result of late payment shall be added to the contract duration.
2. All amounts due above the up-front payment or optional interim payments must be received by Blunt Chisel within 30 (thirty) calendar days of the final invoice unless otherwise stipulated in the proposal. Any amount not paid by the due date will gather interest at a rate of 2 % (two percent) above the prime overdraft rate (per annum) charged by ABSA Bank, calculated and compounded daily in advance as from the due date.
3. No discounts from Blunt Chisel will be given for early settlement.
4. Should the client fail to pay any instalment punctually on the due date or commit a breach of any of the provisions of this contract, Blunt Chisel shall be entitled to claim payment of the full outstanding balance of the contract without prior notice to the client, as well as legal costs incurred on the scale as between attorney and own client, including collection commission.

7. Intellectual Property

1. All intellectual property created prior to the date of the acceptance of the proposal will remain exclusively with the party/parties who at that stage owned the same.
2. All intellectual property arising from Blunt Chisel will belong to Blunt Chisel. Transfer of intellectual property will only be of any effect if agreed upon and signed by both parties in writing.
3. For the purpose of this section, "Intellectual Property" refers to: copyrights, trade marks, designs, art work, concept sketches, characters created, animations, character properties such as textures and expressions, processes designed and formulae derived.

8. Confidentiality

1. Confidential information, for the purposes of this contract, will refer to information that relates to the disclosing party's past, present or future research, business activities, products, services and technical knowledge relating to the work. It will also refer to information that has been identified as confidential, or is of such nature, or has been disclosed in such a way that it is obvious to the other party that the information is confidential. The party disclosing the confidential information will be referred to as the "disclosing party" and the party receiving such information will be referred to as "the recipient."
2. The parties shall:
 - (a) treat as strictly confidential and secret any and all information given or made known to them during the contract period,
 - (b) keep all confidential information secret and only reveal such information to third parties in a manner agreed upon previously in writing by both parties, and
 - (c) accept responsibility for the observance by their employees of the secrecy undertakings contained herein.
3. The above undertakings shall not apply to:
 - (a) information which at the time of disclosure is published or otherwise generally available to the public,
 - (b) information which the recipient can show was in its possession at the time of disclosure by the disclosing party,
 - (c) information rightfully acquired from others who did not obtain it under pledge of secrecy to either of the parties,
 - (d) information published in any final report, governed by Section 4,
 - (e) information which the recipient is obliged to disclose in terms of a court order, subpoena or other legal process.

9. Limitation of Liability

Blunt Chisel does not warrant the merchantability or commercial viability of the work completed or deliverables as specified in the proposal. Subject to clause 2.2, any claim for damages including, but not limited to, loss of income, consequential or incidental damages against Blunt Chisel, whether in violation of law or based on this contract, shall be limited to an amount equal to the contract price or the amount actually paid by the client in respect of the work performed in terms of this contract, whichever is the lesser.

10. Force Majeure

1. Blunt Chisel shall not be responsible for any loss, injury, delay or damage incurred by the client as a result of causes beyond the control of Blunt Chisel or its members, including, but not limited to, natural calamities, strikes, fires, and acts of government bodies.
2. If such a situation occurs as specified in the preceding clause, all the relevant terms and conditions of this contract will be suspended.
3. Should the duration of non-performance as a result of such incidents as mentioned in clause 9.1 exceed 6 (six) months, either party may cancel the contract without any right of recourse against each other, except in respect of work already completed.

11. Non-Waiver

Should any term or condition stipulated in this contract be in any way waived or relaxed, it does not imply that any other term or condition will be waived or relaxed in any way.

12. Governing Law and Dispute Resolution

1. Regardless of where either of the parties reside, this contract and any amendments thereto shall be governed by and construed under and in accordance with the laws of the Republic of South Africa.
2. In the event of any dispute arising from this agreement, the dispute shall be adjudicated by a competent High Court in South Africa (unless otherwise agreed between both parties in writing at the time).

13. Breach and Termination

1. If either party commits a material breach of any of the terms or conditions of this contract, the other party calls for the breach to be remedied and this is not remedied within seven (7) calendar days from receiving written notice of the breach, the party delivering the notice shall be entitled, without prejudice to any other rights it may have in terms of this contract or in law, terminate this contract by written notice.
2. Any party may terminate this contract at any time by giving to the other party (the “defaulting party”) notice of such termination if the defaulting party is, other than for the purpose of restructuring or amalgamation, placed under voluntary or compulsory liquidation.
3. The contract may be terminated at any time by mutual and written consent between the parties.
4. Any termination of the contract will not absolve either of the parties from the obligation to observe the confidentiality measures as set out in this contract. Specifically, Sections 6, 7 and 8 will remain in tact, whatever the reason for termination.

14. Notices

Any notice sent to Blunt Chisel must be delivered either personally, or by post or facsimile. Notices sent by post shall be deemed to have been served seven (7) working days after said notices have been posted by recorded delivery post or air mail. Any notice delivered by facsimile shall be deemed to have been sent at the time of delivery or sending.

15. Severability

Should one or more of the provisions of this contract, for whatever reason, be deemed invalid, illegal or unenforceable, such invalidity, illegality or unenforceability shall not affect any of the other provisions of this contract. This contract will be interpreted as if such illegal, invalid or unenforceable provisions had never been contained herein, unless the deletion of such provisions would result in the entire contract being invalid, illegal or unenforceable.

16. Electronic Communications and Transaction Act

1. No data message (as defined in the Electronic Communications and Transactions Act, 25 of 2002), including an e-mail, SMS and recorded voice message, sent to Blunt Chisel shall amend these contract conditions or the rights or duties of any parties involved, unless it is reduced to paper and signed by both parties or their duly authorised signatories.
2. Data messages (as defined above) sent will only be deemed received once the receiving party responds to them, and for the purposes of this Section an auto-response shall not be a response on the part of Blunt Chisel.
3. Legal notices and/or disclaimers linked to, accessible from or attached to a data message (as defined above) sent to the client shall be deemed part of these contract conditions and shall override and replace any such notices or disclaimers linked to, accessible from or attached to any data message sent by the client in a return message.

17. Entire Agreement

1. This document, together with the proposal, contains the entire contract between the relevant parties and no party shall be bound by any undertaking, representation or warranty if that party is not recorded herein.
2. No alteration, variation, addition or agreed cancellation of this contract shall be of any force or effect unless reduced in writing and signed by both parties or their duly authorised signatories.