



STANDARD TERMS AND CONDITIONS OF TRADE

Mark Banfield & Associates Consulting operates primarily in the Health Technology Sector, providing consulting and advisory services. Our core services include business development, market research, Quality Management Systems and Regulatory Compliance.

Company details

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VAT registration Number: 4470268212

This document contains our standard terms and conditions of trade, applicable to all interactions between client and ourselves, unless expressly limited in the principal written agreement between the parties.

1. GENERAL

- 1.1. Acceptance of a Quotation or Proposal is subject to the terms and conditions contained herein, read with the Special Terms and contained within either the formal written quotation or proposal, which shall constitute a written agreement between the client and Mark Banfield & Associates Consulting (Pty) Ltd, hereafter "MBAC" and shall be final and binding on the parties (herein after referred to as the "Agreement") and shall commence on the date of the client's acceptance of the aforementioned Quote or Proposal.
- 1.2. Engagements entered into without formal special terms being agreed as outlined in 1.1 shall automatically bring these standard terms and conditions into force and effect.
- 1.3. No amendment, alteration or addition to this Agreement shall be valid unless reduced to writing and signed by both parties.
- 1.4. The aforementioned Quotation shall be open for acceptance by the client for a period of 30 (thirty) days from the date hereof and is for the specific elements and descriptions contained therein only.
- 1.5. Should any of the terms of this Agreement be held to be invalid or unenforceable, such term will be severable from the rest of the Agreement, which shall remain valid and binding.
- 1.6. This Agreement shall be governed by the laws of the Republic of South Africa.
- 1.7. The client confirms and warrants that all information provided to MBAC is both true and correct and MBAC shall not be liable to verify any such information provided.

- 1.8. The signatory to any Agreement, on behalf of the client, shall be deemed to be duly authorized by the client to bind the client to that Agreement and personally warrants that he/she is so authorized to do so.
- 1.9. The client acknowledges that it is aware that MBAC's employees and agents are not authorized to vary this Agreement in any way and MBAC shall not be bound to any representation, warranties or undertaking made or allegedly made on its behalf, except to the extent that it is agreed to in writing between MBAC's director(s) and the client.
- 1.10. Notwithstanding anything contained herein, MBAC shall have the right to cancel this Agreement at any time prior to the delivery of any Services, in which case MBAC's liability shall be limited to refunding any amounts paid to it by the client, free of interest, and shall not be liable for any form of loss or damage, including but not limited to consequential loss, suffered as a result of such cancellation, by the client or any third party.
- 1.11. The client specifically indemnifies MBAC from any delay, loss or damage suffered by it/him/her, or any third parties, as a result of incorrect information of any kind being supplied to MBAC or any delay on the client's part to supply requested information.

2. SERVICES

- 2.1. The "Services" or "Scope of Work" shall constitute the specific elements and descriptions contained in the abovementioned Quotation or proposal and the client shall not be entitled to claim any services in addition thereto under the same schedule of fees.
- 2.2. Any variation thereof or additions thereto or further instructions received from a client, shall attract additional charges, which shall constitute a further separate agreement from the principal Agreement.
- 2.3. Should no Quotation be provided in circumstances contemplated in clause 2.2, MBAC's prevailing rate for the specific additional service per hour (which is the responsibility of the client to ascertain, at the time) shall apply.
- 2.4. MBAC makes no guarantees, warranties or any other representations related to the Services in any way.
- 2.5. The Services shall be rendered by MBAC, its associates, subcontractors and/or employees within a reasonable time of receiving this Agreement, duly accepted and signed by the client. Unless otherwise specifically agreed to in writing, it is agreed that time is not of the essence in rendering the Services.
- 2.6. Should the Services relate to the creation of any copyrightable or designed material for the client by MBAC or any material to which any type of intellectual property rights are applicable, any and all rights therein (including the right to use) shall be retained by MBAC, until such a time as full payment for the Services have been received and will only thereafter pass to the client.
- 2.7. Upon rendering of the Services (or such coming to the attention of the client) and/or receipt of any material created or supplied by MBAC in terms thereof, the client shall have 10 (ten) days in which to notify MBAC of any dissatisfaction, deficit, mistake or incomplete nature of the Services rendered, in writing, failing which the client shall be deemed to have accepted the Services and any and all material created and supplied by MBAC in terms thereof, as complete and satisfactory.

3. PAYMENT

- 3.1. The purchase price of the Services shall be as set out in the aforementioned Quotation or proposal, subject to clause 2.2 and 2.3, plus Value Added Tax (VAT).

- 3.2. VAT shall be charged according to the applicable schedules and rates published in the government gazette.
- 3.3. Payment of the purchase price shall become due upon presentation of an invoice by MBAC to the client, which invoice may contain the quoted price as well as any additional charges falling under clause 2.2 and 2.3.
- 3.4. Invoices are payable on presentation or as indicated by the "due date" on the invoice.
- 3.5. Interest will be charged on any amounts overdue as at the first working day of the month, calculated on days overdue (30, 60, 90) or in the case of 120 days or more, at the full annual interest rate.

4. DISPUTES

- 4.1. Any dispute which the client may have with regard to such invoice must be raised by notifying MBAC thereof, within 7 (seven) calendar days of receipt of such invoice, failing which such invoice shall be conclusive evidence of the client's liability as well as the amount owing to MBAC.
- 4.2. No payment may be withheld due to a dispute between the client and MBAC or for any reason whatsoever and the client shall have no right to retain, set off or make any deductions to such amount invoiced.
- 4.3. All invoices shall be payable on presentation, where after MBAC shall have the right to raise interest on such invoiced amount, at a rate equivalent to the maximum permissible finance charge rate allowed from time to time, in terms of the National Credit Act 34 of 2005, or such similar legislation as may be in force at such time.
- 4.4. All agreements are entered into in Good Faith

5. BREACH

- 5.1. In the event of the client breaching this Agreement, including but not limited to a failure to make any due payments, any and all amounts owing to MBAC by the client, shall become payable within 7 (seven) days of such client receiving written demand for such payments and any discounts previously granted shall be forfeit. MBAC reserves the right in such event to reissue an invoice excluding any discounts previously granted on unpaid invoices. For the sake of clarity, this clause shall apply, regardless of whether the Agreement has been cancelled in terms of clause 5 or not.
- 5.2. MBAC shall not be liable in any way to release any material of whatsoever nature, whether this Agreement has been cancelled or not, before full payment of all amounts owing by the client to MBAC, is received.
- 5.3. Should the client fail to provide such information, access or other material deliverable to MBAC pursuant to the execution of its undertakings, or which have the effect of delaying or putting the successful completion of an assignment at risk, the client shall be deemed to be in breach of the principal agreement or these standard terms and conditions.

6. LIMITATION OF LIABILITY

- 6.1. Notwithstanding anything contrary contained in this Agreement, MBAC shall under no circumstances whatsoever be liable for damages which is in aggregate a higher amount than the purchase price already paid by the client for any Services, regardless of how same may arise.
- 6.2. Under no circumstances shall MBAC be responsible for any direct, indirect, consequential, punitive or and other type of damage or loss, which may arise pursuant to this

Agreement, the rendering of the Services by MBAC or any delay in delivering or rendering the Services.

- 6.3. The Services are used strictly at the client's own risk.
- 6.4. The Client indemnifies and holds MBAC harmless against all claims and expenses of whatsoever nature and description arising from the sale, supply and / or use of the Services, whether by the client or a third party and the client undertakes to pay to MBAC on demand, any and all costs, on an attorney-own-client scale, in defending such claims.

7. TERMINATION

- 7.1. Either party shall have the right to cancel this Agreement upon 20 (twenty) business days' written notice to the other party. No oral cancellation or retraction of any order for Services shall be valid or enforceable against MBAC.
- 7.2. MBAC shall have the right to cancel this Agreement with immediate effect in the event that:
- 7.3. The client breaching any of the terms contained in this Agreement (including but not limited to non-payment) and fails to remedy such breach within 7 (seven) days of receiving a written demand from MBAC to remedy such breach;
- 7.4. The client is placed under business rescue, liquidated or sequestrated, provisionally or finally;
- 7.5. Any information supplied by the client to MBAC is either false or fraudulent in nature.
- 7.6. In the event of *de facto* termination of any agreement without specific notice, any monies paid in relation to that agreement are forfeit by the client, unless written agreement is made to offset the monies paid against future work.
- 7.7. Should this Agreement be terminated for any reason, the client shall remain liable for payment for all Services rendered up to and including the date of termination, whether rendered as a result of this Agreement, any subsequent agreement in terms of clause 2.2 or the Law in general.
- 7.8. MBAC shall have the right to set off due amounts for any Services rendered, against any monies previously paid by the client to MBAC, regardless of the reason for such payment, without limiting any of MBAC's rights and shall only be liable to refund amounts in excess of the amounts due for any Services, whether rendered in terms of this Agreement, any subsequent agreement in terms of clause 2.2 or the Law in general.
- 7.9. The client hereby consents to the jurisdiction of the Magistrates Court for any action instituted by MBAC and all legal costs incurred in enforcing MBAC's rights in terms of this Agreement shall be for the client's account, on an attorney-own-client scale, including any collection commission and/or tracing charges.

8. NOTICES:

- 8.1. The parties select as *domicilium citandi et executandi* (service addresses), the addresses (including fax numbers and email addresses) contained in the aforementioned Quote and/or Proposal, and consent to receive notices *via* electronic means.
- 8.2. Notices in terms of this Agreement shall be deemed to have been received:
- 8.3. On the day same comes to the attention of the party it is addressed to, regardless of whether this clause 5.5 was adhered to;
- 8.4. On the day that same is hand or courier delivered, emailed or faxed, or
- 8.5. After 5 (five) business days if same was posted.

9. CONFIDENTIALITY, NON-COMPLETE AND NON-CIRCUMVENT

- 9.1. Initial consultations and proposals contain proprietary and confidential information. Person receiving such proprietary and confidential information understand that there is a contract that exists between the parties and binds them to the agreement mentioned above. Thus, the document and its material may not be used in competition with its owners.
- 9.2. During the term this information is in your possession or you have knowledge of its existence you agree as follows:
- 9.3. To treat all information herein as confidential and is to be used only for the contemplated purposes, not for any other purpose or disclosed to any third party.
- 9.4. To inform, direct, suggest, cause or solicit in any way other parties to utilize this or any similar information.
- 9.5. To not enter into any direct Agreement with any other party for the purpose of providing the same services as herein noted.
- 9.6. To not in any way circumvent directly or indirectly, any ongoing negotiations between parties involved in this document and proposal.
- 9.7. No copies will be made or retained of any information or supplied without the permission of MBAC.
- 9.8. At the conclusion of discussion or upon demand by MBAC, all confidential information, including written notes, photographs, sketches, models, memoranda, schedules, prototypes, budgets etc. shall be returned to MBAC.