

# SUN MeDIA MeTRO Printing Terms and Conditions January 2012

In any contract that may arise, Clients will be deemed to have ordered and SUN MeDIA shall be deemed to have accepted such order, unless otherwise agreed in writing, upon the following terms and conditions:

1. The Client is liable to pay value added tax at the rate applicable from time to time.
2. Payment terms are as follows:
  - 2.1 A deposit of 50% is required on all orders above R5,000;
  - 2.2 Cheques above R500 will only be accepted if bank guaranteed;
  - 2.3 Proof of payment is required prior to delivery or collection for all COD clients; and
  - 2.4 Account terms are 30 days net from date of invoice unless other financial arrangements are agreed to in writing.
3. Accounts are subject to credit approval at SUN MeDIA's discretion.
4. Interest on overdue accounts will be charged at the rate of 2% per month compounded, and if the Usury Act No. 73 of 1968, as amended, or any substitution thereof is applicable, interest will be charged at the maximum rate permissible.
5. Delivery costs are based on current courier and packaging fees.
6. Postage will be charged at normal postal rates.
7. Delivery of part of any order shall be deemed to be a delivery for which payment must be effected in terms of the invoice in respect thereof.
8. Quotations not accepted within THIRTY (30) days thereof shall be deemed withdrawn and cancelled.
9. The Client shall pay for any preliminary work which is produced at the Client's request, at SUN MeDIA's customary rates whether experimentally or otherwise.
10. Proofs, pulls, samples, specimens, sketches, photographs or any representation, whether partial or total, of the finished article in whatever form may be submitted to the Client for approval. After approval, the Client shall have no claim against SUN MeDIA for errors in the exemplar as approved by the Client. Changes required by the Client, other than the correction of SUN MeDIA's errors, may be charged for at SUN MeDIA's customary rates. In particular, if the Client requires, for any reason, a reprint of any order of which the Client has previously approved, which reprint includes any change or alteration of any kind to the order, then such reprint shall be for the account of the Client notwithstanding that the Client may purport to make a claim arising from the original order.
11. Goods will be despatched to or must be collected by the Client when ready and the Client shall not refuse to take, or delay in taking, delivery.
12. When required to expedite production and/or delivery ahead of the time agreed upon for proper production and/or delivery, SUN MeDIA shall not be liable for errors. Should such production and/or delivery require payment of overtime wages and other additional costs or delivery charges, all such extras are for the Client's account.
13. The Client shall accept as good and complete delivery and shall pay the contract prices pro rata for any quantity that does not exceed or fall short of the quantity ordered by more than 10%.
14. The Client may return an order, or part of an order, if:
  - 14.1 the goods are not of the type and quality as reasonably contemplated and agreed between SUN MeDIA and the Client;
  - 14.2 the goods do not reasonably conform to the material specifications of the order;
  - 14.3 within SIX (6) months after delivery, the goods have been found to contain defects and are not usable or durable for a reasonable period of time, having regard to the use to which they would normally be put and to the surrounding circumstances of their supply; or
  - 14.4 the goods have been found to not be suitable for the particular purpose communicated to SUN MeDIA.
  - 14.5 Goods returnable in terms of 14.1, 14.2 and 14.4 above must be returned to SUN MeDIA within TEN (10) business days after delivery to the Client.
  - 14.6 Goods may not be returned once they have been partially or entirely disassembled or physically altered in any way.
  - 14.7 SUN MeDIA shall refund the Client for the price paid for the goods, less any amounts allowed in terms of the Consumer Protection Act, 2008.
15. Standing matter and SUN MeDIA's materials (hereinafter called "the Goods") of any kind whatever may be distributed, effaced or disposed of immediately after the order is executed, unless written arrangements are made for retention. SUN MeDIA may charge reasonable rent for storage of the Goods retained at the Client's request and shall not be responsible for any damages suffered by the Client arising from the loss, theft, damage or destruction of any such Goods, it being recorded that such Goods are not insured. The Goods shall be the property of SUN MeDIA unless otherwise agreed to in writing with the Client.
16. If Goods are stored in accordance with the Client's request beyond the agreed delivery date, such Goods, the Client's property and property supplied to SUN MeDIA on behalf of a Client at any time, will be held at the Client's risk. SUN MeDIA will not be responsible for imperfect work caused by defects in or unsuitability of material or equipment not supplied by SUN MeDIA. Any claims in respect of such imperfect work shall be limited in accordance with clause 14 hereof. SUN MeDIA shall not be responsible for Client's material wasted in the course of production. Extra costs incurred through the use of defective material and/or standing matter and printers material and/or equipment supplied are for the Client's account.
17. SUN MeDIA shall not be required to reproduce any matter which, in its opinion, is illegal or defamatory. In the event that any claim is made against SUN MeDIA on the ground that anything printed on behalf of the Client is illegal or defamatory, the Client indemnifies SUN MeDIA and holds it harmless against and shall pay all such damages, fines and costs awarded against SUN MeDIA or paid by SUN MeDIA within its sole discretion as a result of any claim instituted and/or pursued or prosecution of SUN MeDIA arising from the printing or publication or circulation of any such matter. The Client furthermore indemnifies SUN MeDIA and holds it harmless against and shall pay any claims, costs and expenses arising out of infringement of copyright, trademarks, patent or design. The Client shall also pay all SUN MeDIA's costs on the scale as between attorney and own client as may be expended by SUN MeDIA in defending such claims or charges as are referred to above.
18. Unless otherwise agreed, either party may terminate any contract for printing a periodical publication by giving not less than THREE (3) months' notice in writing. Nevertheless, SUN MeDIA may forthwith terminate any such contract should moneys due remain unpaid or should any other of these conditions be breached.
19. Any contract is subject to cancellation or variation by SUN MeDIA by reason of Force Majeure from any and every cause whatsoever beyond SUN MeDIA's control, including, but not limited to, inability to secure labour, materials, power or supplies, or by reason of an act of God, war, civil disturbances, riot, state of emergency, strike, lockout or other labour dispute, fire, flood, drought, legislation, burglary or theft. In any such event, the Client shall have no claims against SUN MeDIA for damages or otherwise howsoever arising.
20. The Client shall be liable for and SUN MeDIA may recover from the Client any material increase in cost of production and materials which occurs between the acceptance and execution of any order, provided that SUN MeDIA shall immediately inform the Client of the increase in cost as soon as reasonably possible.
21. SUN MeDIA shall not be required to work to tolerances closer than those applicable to the materials obtained by SUN MeDIA in the ordinary course of trade. No liability shall arise from variations in the standard, quality and performance of such materials.
22. It is the sole responsibility of the Client to determine whether the Goods ordered by the Client are suitable for the purpose for which the Client intends using them. SUN MeDIA gives no warranty, express or implied, concerning the suitability of the Goods supplied for any purpose whatever. SUN MeDIA shall not be liable for any direct, indirect, consequential or other loss, damages, claims of set off and counterclaims, including loss to THIRD PARTIES, arising out of errors in carrying out a contract, or by delay in delivery, or by unsuitability of Goods for use as intended.
23. When payment is overdue, or where SUN MeDIA anticipates that the Client may not be able to pay on due date, SUN MeDIA may suspend deliveries without notice and without prejudice to any other legal remedy until due payment has been made and shall not be liable for any damages suffered by the Client as a result thereof. Notwithstanding any of the aforesaid provisions, any moneys in respect of goods completed but not delivered shall thereupon forthwith become due and payable. Moreover, SUN MeDIA may exercise a general lien on all items printed on behalf of the Client and on property in SUN MeDIA's hands whether or not payment is overdue where SUN MeDIA anticipates that the Client may not be able to make payment on due date, and may dispose of such items and property as SUN MeDIA sees fit and apply the proceeds towards such debts as soon as payment becomes overdue. SUN MeDIA may also elect to cancel and not to produce any unmade balance of such contract and recover from the Client any loss sustained by so doing. The acceptance by SUN MeDIA of any Promissory Note or Bill of Exchange shall not be regarded as a novation of any existing debt, nor shall it in any way affect SUN MeDIA's lien aforesaid.
24. The Client shall have no claim or right of set-off in respect of damages or consequential loss howsoever arising.
25. Ownership of all goods shall remain vested in SUN MeDIA until payment, and notwithstanding delivery, SUN MeDIA shall be entitled to take possession of such goods pending payment if SUN MeDIA believes that the Client may not be able to make payment on due date, or if the Client fails to make payment upon due date.
26. In the event that the Client breaches these terms and/or conditions, SUN MeDIA shall have the right to forthwith terminate the agreement or claim immediate payment of all amounts payable by the Client, whether or not any such amounts are otherwise due for payment. If SUN MeDIA elects to terminate, SUN MeDIA shall furthermore be entitled to recover from the Client such damages as SUN MeDIA has sustained arising from the said breach by the Client.
27. In the event that a dispute arises between the Client and SUN MeDIA, then such dispute may, at the instance of SUN MeDIA only, be resolved by the decision of an expert appointed for that purpose by the President of the Cape Chamber of Printing and Allied Industries for the time being. In so deciding upon the dispute, the decision of the expert shall be final and binding on both parties. Such dispute shall be informally decided without the necessity for pleadings or evidence, but in so deciding the dispute, such expert shall give effect to and apply the provisions of the agreement between SUN MeDIA and the Client, including these Terms and Conditions.
28. No variation of these Terms and Conditions or of the agreement between SUN MeDIA and the Client, which incorporates these Terms and Conditions, shall be of any force or effect unless reduced to writing and signed by both parties and no leniency or extension of time granted by SUN MeDIA to the Client shall constitute a waiver or novation of any of SUN MeDIA's rights or the Client's obligations in terms hereof.
29. The Client consents to the jurisdiction of the Magistrate's Court in terms of Section 45 of the Magistrate's Court Act of 1944, as amended, in respect of any action or proceedings which may be instituted against the Client for any amount due by the Client. Notwithstanding the foregoing, SUN MeDIA will be entitled, in its discretion, to institute any action or proceedings against the Client in any High Court which has jurisdiction.
30. If goods ordered by a Client are to be despatched by bulk postage, an amount equal to the cost of the bulk postage shall be paid to SUN MeDIA by the Client upon request. If such amount is not so paid, the Client shall pay the same when the balance of the Client's account is due and will then have to pay for postage as if no bulk discount had been received.
31. In the event that SUN MeDIA instructs attorneys to claim payment from the Client arising from a breach of the Client's obligations to SUN MeDIA, all the costs incurred shall be recoverable from the Client on the tariff as between attorney and own client, as well as collection commission in accordance with the applicable tariff.
32. The Client chooses domicilium citandi et executandi at the physical address set forth on the relevant quotation.