

# Supplier Terms and Conditions

PD7

August 2016

# Table of Contents

<b>1. Definitions and Scope</b> .....	<b>3</b>
<b>2. Fees</b> .....	<b>4</b>
<b>3. Gifts</b> .....	<b>4</b>
<b>4. Invoicing</b> .....	<b>4</b>
<b>5. Broad – Based Black Economic Empowerment (B-BBEE)</b> .....	<b>5</b>
<b>6. Warranty</b> .....	<b>6</b>
<b>7. Breach</b> .....	<b>9</b>
<b>8. Term and Termination</b> .....	<b>9</b>
<b>9. Dispute Resolution</b> .....	<b>9</b>
<b>10. Confidentiality</b> .....	<b>10</b>
<b>11. Record Keeping</b> .....	<b>10</b>
<b>12. Waiver</b> .....	<b>10</b>
<b>13. Cession and Delegation</b> .....	<b>11</b>

## 1. Definitions and Scope

**1.1.** These terms and conditions shall apply to any official Purchase Order (“PO”) or service contract that is issued by Kagiso Media Group (“The Company”), its companies or Divisions as listed below:

Kagiso Media (PTY) Ltd	2013/055452/07
Jacaranda FM (Pty) Ltd	1995/009190/07
East Coast Radio (Pty) Ltd	Division of Kagiso Media (PTY) Ltd
Urban Brew Studios (Pty) Ltd	1998/005007/07
Urban Rhythm Factory (Pty) Ltd	1999/005659/07
Mtombo Audio Solutions (Pty) Ltd	2007/007923/07
Knowledge Factory (Pty) Ltd	2010/020642/07
Kaufman Levin Associates (Pty) Ltd	2006/018321/07
Kagiso IO	Division of Kagiso Media (PTY) Ltd
MediaMark (Pty) Ltd	1996/004747/07
Juta and Company (Pty) Ltd	1919/001812/07
ReelAfrican Inc	2016/188454/10
Adjoin Media (Pty) Ltd	2016/215549/07

- 1.1.1. “Purchase Order (PO)” means an order for goods and/or services that is printed on stationery bearing the words “PO” and the details of any of the above Group Companies and which has been signed by an authorised signatory on behalf of that Company.
- 1.1.2. “Contract” refers to any legally executed Contract of Supply for goods and/or services between any of the above Companies and a Supplier or Service Provider.
- 1.1.3. References to “Supplier” shall include reference to a “Service Provider”
- 1.1.4. Reference to “goods” or “item” shall include references to “services” or “service description” for the purposes of this document
- 1.1.5. Unless otherwise indicated by the context, references to the singular shall include the plural and any reference to gender shall include the opposite gender
- 1.1.6. “Business Days” shall mean weekdays, excluding those that fall on a public holiday.
- 1.1.7. The following precedence shall be effective where any conflict exists between these terms and conditions and those of Suppliers and Service Providers:
- 1.1.7.1. When the official PO is generated in response to acceptance of a formal quotation, the Supplier’s terms and conditions as stated on the quotation shall take precedence;

- 1.1.7.2. When an official PO is placed upon a Supplier with whom a prior credit agreement has been concluded, the terms and conditions of the credit agreement shall take precedence; These terms and conditions shall apply if the two clauses above are not applicable.

## 2. Fees

If the PO does not include pricing, the price for the products or services provided hereunder will be Supplier's lowest prevailing market price for such products or services.

Supplier is not entitled to reimbursement of expenses incurred in connection with fulfilling this PO, except as otherwise agreed in writing by the Company.

## 3. Gifts

Supplier shall not make or offer a gratuity or gift of any kind to Company employees or their families that could be viewed as relating to an actual or potential business relationship with the Company.

## 4. Invoicing

Invoices will be paid within 30 days of the end of the month in which the invoice is received, or such other time period agreed by the parties, provided that the invoice is correctly rendered, and complies with the Company's order. In the event of any claim by the Company against the Supplier, payment may be withheld until such claim is resolved.

A tax invoice is correctly rendered if:

1. the specified amount is correctly calculated, with the correct unit prices, and is otherwise due for payment;
2. the invoice is set out in a manner that enables the Company to ascertain the Products and/or Services and services to which the invoice relates;
3. the invoice is accompanied (where necessary or where reasonably requested by the Company) by verifying documentation;
4. the invoice is addressed to the address notified by the Company from time to time; and
5. the invoice includes the Company's order number, the packing slip/delivery note number; any discounts applicable and reflects payment terms in accordance with this Agreement;
6. the invoice indicates Supplier and Company vat numbers;
7. the invoice indicates Company allocated PO number, as referred to order number on (e);
8. the invoice indicates Supplier invoice number;
9. the invoice indicates Supplier bank account details.

Credit Notes must be presented by the Supplier bearing the same address and layout details as an invoice.

## **5. Broad – Based Black Economic Empowerment (B-BBEE)**

The Company is committed to the achievement of the goals set out in the Broad-Based Black Economic Empowerment Amendment Act No. 46 of 2013 (“the B-BBEE Act”) and all other related legislation.

### **5.1. The Supplier acknowledges and accepts that in order for the Company to achieve its goals in terms of the B-BBEE Act, the Supplier’s B-BBEE status is of critical importance to the Company.**

#### **5.1.1. The Company prefers to contract with Suppliers who meet the following criteria;**

1. Have between a Level 1 (one) and 4 (four) BEE Rating;
2. Have a Black Ownership (“BO”) of 51% (fifty one percent) or higher;
3. Black Woman Ownership (“BWO”) of 30% (thirty percent) or higher.

### **5.2. The Supplier confirms that in terms of the B-BBEE Act, it shall be classified as an Empowering Supplier.**

#### **5.2.1. Furthermore the Supplier confirms that:**

1. If exempt (e.g.: Intellectual Property) – it shall comply with all requirements in order to be deemed as an exclusion.
2. If the Supplier is of a rating 1–4: it will not drop more than 1 level in terms of its B-BBEE rating;
3. If the Supplier is of a rating 5–8: it will:
  - a) Provide a detailed plan with milestones and timelines required in order to increase its B-BBEE Rating to a level 4.
  - b) Use all possible endeavours to achieve the requirement as stated above. The Company in its sole discretion will determine if the Supplier has used all possible endeavours to achieve the required rating.
  - c) If the Supplier is of a rating of non-compliant: it will apply within 15 days for a certificate in terms of the B-BBEE Act. Within 30 days after applying for the certificate it shall provide the Company with a copy of the Certificate. If the Supplier is not able to provide the certificate, the Supplier is required to provide

justification why and a letter from an accredited Agency stating when the Certificate will be available;

### **5.3. The Supplier shall:**

1. In respect of Generic Enterprises: be verified in terms of an authorized and accredited Agency as stipulated in the B-BBEE Act.
2. In respect of Exempted Micro Enterprise (“EME”) / Qualifying Small Enterprises (“QSE”): be required to provide an affidavit as required in terms of the B-BBEE Act.
3. Provide the Company within 10 days of signature of this agreement the following documents:
  - a. Current B-BBEE Certificate in respect of Generic Companies;
  - b. Current affidavit in respect of EME and QSE;
  - c. Current BEE Policy;
  - d. Plans that the Supplier has in order to retain and improve its current ratings
4. The Supplier shall reasonably act to ensure that it will commence its verification process early enough to ensure that its current B-BBEE Certificate does not expire without a new B-BBEE Certificate being in place, issued and available to send to the Company.
5. Based on this commitment the Supplier will provide the above mentioned items on an annual basis within 10 days of expiration of their Current B-BBEE Certificate.

All costs in order to obtain the B-BBEE Certificate and / or Affidavits shall be borne by the Supplier

## **6. Warranty**

### **6.1. The Supplier warrants that all products supplied under this Agreement:**

1. are free from any contamination;
2. comply with all relevant:
  - health;
  - product packaging;
  - transport, handling and storage;
  - environmental;
  - weights and measures, and all other relevant legislation, regulations and other requirements of the Country, standards and industry codes of practice;

3. conform with the description given by the Supplier;
4. conform with the specifications and the quantities stated in the relevant PO and with any samples provided, and otherwise meet the requirements of a PO;
5. correspond with any sample in quality;
6. are free from defects in workmanship and materials, of merchantable quality, free from defect or delivery, and are fit for the purpose and use for which they are acquired;
7. are free from any lien or encumbrance, and the Supplier has good marketable title to them; and
8. shall, for the lifetime of the product, perform at a level consistent with the Supplier's specifications and representations as to functionality and suitability for purpose, and otherwise satisfy and comply with the terms of any product warranty supplied with the product.

**6.2. The Supplier warrants that it will:**

1. provide the Products and Services at all times exercising due care, skill and judgment, in a proper workmanlike manner, and in accordance with the Company's specifications;
2. provide the Products and Services in the timeframes specified in the Agreement or as otherwise specified by the Company;
3. ensure that all methods and procedures employed in performing the Services and supplying the Products are ethical and are, where possible, best practice methods and procedures currently employed in the industry;
4. ensure that only appropriately skilled personnel work on the provision of the Products and Services;
5. provide the Products and Services in accordance with all the Company's reasonable requirements and directions;
6. prepare and submit to the Company such reports as are required as to the Supplier's performance as and when required by the Company;
7. ensure that in providing the Products and Services all applicable laws and regulations are complied with; and
8. ensure that no act or omission of the Supplier may or may be likely to prejudice or harm the interests of the Company.

**6.3. Without limiting the application of any other clause, the Supplier warrants that:**

- (a) the Services and the results thereof will be free from defect or deficiency for a period of 12 months from the date at which they are completed;
- (b) it understands all risks, difficulties, contingencies and other matters relating to performing the Services and the terms and conditions of this Agreement and is able to comply with the same;

(c) it has the resources, skill, competence, expertise, experience, knowledge and ability necessary to supply the Services and Products in accordance with this Agreement;

(d) it will provide all necessary on-site and off-site personnel needed to ensure it effectively meets its obligations under this Agreement;

(e) the personnel engaged by the Supplier in the performance of this Agreement are duly qualified to and will perform their obligations in a careful, skilful and diligent manner; and;

(f) it will have or will at its expense acquire all licences, permission, permits or authority required to perform the Services and supply the Products, including all intellectual property rights needed.

**6.4.** **In the event of any breach** of clauses 6.1, 6.2 or 6.3, and without limiting any other rights or remedies which may be available to the Company, the Supplier will, at the request of the Company, either provide the Products or Services again free of charge, rectify or pay the cost of rectification of any deficiency in the Products or Services, provide the Company with a credit in respect of the defaulting Products or Services or repay to the Company the price of the defaulting Products or Services. The Supplier must pay the cost and bear the risk of storing, handling and returning any Products rejected by the Company under clauses 1, 2 or 3.

**6.5.** **The Supplier shall be liable for and shall indemnify the Company for all direct and indirect losses, damages and costs** (including, but not limited to, any sums which are paid or payable by the Company to third parties and all economic and consequential losses) sustained or incurred by the Company as a result of the manufacture and/or supply of Products which do not comply with the warranties set out in clauses 6.1, 6.2 and 6.3. The said liability of the Supplier shall not be affected by any failure by the Company to inspect the defective Products upon or after delivery of the same or any failure by the Company to detect or discover the defect, whether or not such failure to inspect the Products or failure to detect or discover the defect was unreasonable or negligent in the circumstances, and it shall not be competent for the Supplier to assert or set up such a failure to inspect the Products or such a failure to detect or discover the defect or claim, action or suit by the Company in respect of the manufacture and/or supply of the defective Products.

**6.6.** **Without limiting the generality** of clause 6.5 hereof, in the event that any Products supplied to the Company by the Supplier fail to comply with the warranties set out in clauses 6.1, 6.2 and 6.3 and this necessitates a recall of any product or thing incorporating the defective Products, whether such recall be made by the Company or any customer of the Company or any other party, the Supplier shall indemnify, protect and hold harmless the Company, its successors, assigns, customers and the users of its Products against all actions, claims, demands, expenses, costs and liabilities incurred or arising as a consequence of an such recall and without limiting the generality of the foregoing, the Supplier shall reimburse the Company for all costs and expenses incurred by the Company whether directly or indirectly as a result of or in connection with any such recall.

**6.7.** For the purposes of sub-clause 6.6 above, costs and expenses incurred by the Company indirectly as a result of or in connection with any recall shall include any costs, damages or other moneys paid or payable by the Company to any other party as a result of or in connection with such recall.

## **7. Breach**

Should either party commit a breach of any provision of this Agreement and fail to remedy such breach within 10 Business Days of receiving written notice from the other party requiring it to do so, then the party aggrieved by such breach shall be entitled, without prejudice to its other rights at law, to terminate this Agreement and to claim any costs, including attorney and own client costs, incurred by either party arising out of the breach by the other party of any of the provisions of this Agreement shall be borne by the party in breach.

Such a claim shall be subject to the applicable rules of the courts/or forums in the Republic of South Africa, failing which the aggrieved party will be entitled to cancel the Agreement.

## **8. Term and Termination**

Unless otherwise expressly set forth herein, the term/and or duration of this PO shall be from the date of the PO until delivery and acceptance of all or goods or completion of all the services. Notwithstanding the foregoing, the Company may terminate this PO at any time, for any reason, upon written notice to the Supplier; provided, that if the Company terminates a PO for any reason other than Supplier's default, the Company shall pay to Supplier any and all sums that are due and payable for goods delivered and accepted, and services provided and accepted, through the date of termination and shall reimburse the Supplier for expenses incurred in accordance with the PO through the date of such termination. Should termination charges be contemplated, the Supplier shall identify said charges within 30 days of termination and bear the burden of proof in justifying such charges. The Company shall have no other obligation hereunder from and after the date of termination. Termination for any reason shall not affect the rights granted to the Company by Supplier hereunder.

## **9. Dispute Resolution**

Both parties agree to the following dispute mechanism:

1. In the event of any disagreement arising out of this Agreement or the interpretation thereof, while in force or after its termination and the parties being unable to reach agreement, the matter will be referred to the Company Management within 5 Business Days after the parties disagreed, of each of the parties who will endeavour to settle the dispute through bona fide negotiations;
2. In the event that the parties are still unable to reach agreement within 5 Business Days after the dispute was referred through the process referred to in point 1, it is hereby agreed that a dispute shall be submitted to and decided by arbitration in accordance with the rules of the Arbitration Foundation of Southern Africa (AFSA) or relevant Country Authority, by an arbitrator agreed upon between the parties or, failing agreement, appointed by AFSA or relevant Country Authority;
3. Each party is entitled to give notice of arbitration, provided that such notice shall be given within 5 Business Days and not later than 20 Business Days from the date that

the Management of the parties or their nominees first met as contemplated in point 1; unless the parties agree to extend the time periods referred to herein;

4. Unless otherwise agreed by the Parties in writing the arbitration shall be referred to AFSA, and the Parties agree that the arbitration award shall be final.

## 10. Confidentiality

Supplier acknowledges that in the performance of the Services, Supplier will have access to trade secrets and confidential or proprietary business information of the Company's or its parent or affiliated companies, which is not generally known and which gives the Company, its parent and affiliated companies an advantage over their competitors who do not know it, or the contents of any project and/or material handled by Supplier on the Company's behalf (such information referred to herein as "Company's Confidential Information"). Supplier agrees to refrain at all times, either during or after the performance of the Services, hereunder, from using or disclosing to others the Company's Confidential Information except for the benefit of the Company and further to refrain from any other acts which would decrease the value of the Company's confidential information. All Company's Confidential Information, including but not limited to, any files, records, documents, drawings, specifications, prints, computer programs, customer lists, training materials, specific customer information, engineering studies, compilations of product research or marketing techniques provided by or relating to the Company or Company's parent or affiliated companies, or coming into Supplier's possession in connection with the performance of its duties hereunder, shall remain the exclusive property of the Company. Upon termination of this PO, Supplier shall return to the Company promptly any and all documents or items that are the property of the Company or contain or comprise Company's Confidential Information. This agreement of confidentiality shall survive the termination of this PO. Unless the Company expressly agrees otherwise in writing, no information or knowledge disclosed to the Company by the Supplier in the performance of or in connection with this PO shall be deemed to be confidential or proprietary, and any such information or knowledge shall be free from any restrictions as part of the consideration for this PO.

## 11. Record Keeping

The Supplier will maintain, subject to applicable country laws in terms of record retention, relevant documentation relating to PO, i.e. invoices, technical, accounting, design, etc., to ensure compliance with retention legislations. If no such legislation is clearly defined, the supplier will keep records for a minimum of 5 years following termination of PO.

## 12. Waiver

The non-exercise of or delay in exercising any rights or power of a Party does not operate as a waiver of that power or rights. Should either party waive any of its rights in terms of this

Agreement, such waiver shall not apply or be construed as waiver of all the other rights herein.

## **13. Cession and Delegation**

Subject to the provisions of this Agreement, neither Party shall be entitled to cede or delegate any of its rights or obligation in terms of this Agreement, in whole or in part to any other Party or person without prior written consent of the other Party.