

TERMS AND CONDITIONS

Last Updated : 23 July 2019

DEFINITIONS

- 1.1. The word **CLIENT** means the person, company or Companies that Cognite 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 Cognite to the Client.
- 1.3. The word **PROJECT** relates to all Deliverables rendered by Cognite to the Client as part of a certain predefined scope.
- 1.4. The word **RETAINER** relates to all Deliverables rendered by Cognite to the Client as part of an ongoing agreement.
- 1.5. The word **CONSULTANT** relates to any personnel of Cognite.
- 1.6. The word **CONTENT** relates to all text, imagery, video or any other elements created or used.

FUTURE CHANGES TO THE TERMS AND 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.cognite.co.za or request an electronic copy of the latest agreement. Cognite will endeavour to publicly post notices of Terms and Condition changes on Cognite's Facebook and LinkedIn profiles and sending out a newsletter to those that are subscribed to it at the time. The Client's continued use of Cognite'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 Cognite 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 Cognite have the right to pause any services until the production of documentary proof is delivered and displayed to Cognite. The aforementioned proof will be furnished to Cognite within reasonable time.
- 2.3. It is the responsibility of the Client to provide Content to Cognite, either electronically or through courier delivery.

INITIAL
HERE

TERMS AND CONDITIONS

Last Updated : 23 July 2019

2.4. Should the Content be of poor quality and Cognite is required to implement improvements, then the Content preparation costs, billed at an hourly rate as agreed upon between Cognite and Client, will be incurred by the Client.

2.5. Consultants are only available for communication within Cognite's office hours, which can be found on www.cognite.co.za.

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

2.7 Cognite reserves the right to refuse services to the Client.

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

2.7.2 All work paid for will then be handed over to the Client to conclude the cancellation.

2.8 Cognite cannot guarantee that any Deliverable is 100% unique worldwide. Cognite attempts to create original Deliverables, but coincidental similarities with other Deliverables may be unavoidable. Cognite 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 Cognite, has been signed off and fully paid for, 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 Cognite 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 before signing this document.

PROJECTS

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

3.1. If Cognite cannot get hold of the Client through available channels or alternatively if the client does not provide any written feedback within 10 business days since the last change request, causing the project to stall in any way, then Cognite will mark the project as dormant and the dormant project will be removed from the active project list.

3.1.1 A 30% cost of the total project invoice will be levied by Cognite to the Client and must be paid by the Client to reactivate the project in the future.

3.2. If the project is dormant for longer than 6 months, then the project will be terminated and all design source files will be removed from Cognite's network and all costs paid by the Client to Cognite will be forfeited due to the Clients breach of the terms and conditions without prejudice to any other claims Cognite may have against the Client for damages.

3.3. If the Client chooses to cancel the project after 14 calendar days from paying the first deposit payment and/or implementing any part of the proposed solution then the deposit will not be refundable and shall be accordingly forfeited.

INITIAL
HERE

TERMS AND CONDITIONS

Last Updated : 23 July 2019

- 3.3.1 In all project cancellations, the designs and their design versions will stay the copyright and property of Cognite.
- 3.3.2 Any copy, distribution or use of these cancelled project assets, by the Client, will constitute a copyright violation and Cognite reserves its right to take further legal action against the Client for damages suffered in any form whatsoever.
- 3.3.3 Cognite may choose to refund parts of a deposit under special circumstances.

3.4. Only one meeting with the Client, within a 50km radius of an appropriate consultant, is included as part of a project where the project value is above R 2 500.00 (TWO THOUSAND AND FIVE HUNDRED RAND). Any further meetings and/or consultations at any location will constitute a consultation and the Client will be billed at an hourly consultation rate as agreed upon between Cognite and the Client.

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.

4.2. In each Deliverable, where the project change request limit has been reached, the Client may request additional changes at an hourly rate as agreed upon by both parties.

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.

4.4. All Project Deliverables include a version limit of four, unless previous written arrangements have been made. The Deliverable version limit consists of the first concept version and then three additional versions.

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. The minimum allocated time per task is 0.25 hours (15 minutes).

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.

INITIAL
HERE

TERMS AND CONDITIONS

Last Updated : 23 July 2019

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. Cognite will generally choose to allocate unspent time to the following month if Cognite 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 Cognite or applicable Third Party providers. If the cost of an item is low then Cognite 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. Cognite will generate a final invoice for the outstanding amount and same will be delivered to the client within a reasonable time.

5.8. A Retainer may be cancelled with a 30 calendar day notice. Cognite will attempt to allocate any available Retainer time to constructive tasks within those 30 days, assuming constructive Client communication. Any unused time will be expired on the last day without refund.

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, fax 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 Cognite.

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 is sent to print, manufacturing, production, or a signed off service implemented, but it contains errors that the Client did not notice, then the resulting printing, manufacturing and 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.

INITIAL
HERE

TERMS AND CONDITIONS

Last Updated : 23 July 2019

BACKUPS

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

- 7.1. Cognite 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. Cognite 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.
- 7.3. Cognite does not offer or guarantee backups of Deliverables. Cognite 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

Only applies if the Client is using Cognite for email, website, domain or related internet hosting.

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

- 8.1 Cognite provides all email, website and related hosting services through XNEELO (www.xneelo.co.za) (Previously known as Hetzner SA). "Cognite" below refers to the services that Cognite makes available to the Client through XNEELO's services. Cognite is dependent on the current state of the XNEELO network and the Terms and Conditions of that company.
- 8.2 Cognite reserves the right to block 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. Cognite 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 Cognite will start the deletion process. Deleted domains would then become available again for registration by any third party.
- 8.4 If XNEELO notifies Cognite of any security violations then Cognite will inform the Client as soon as possible, using the resources available to Cognite at that time. The Client will be notified via email to take appropriate action such as the changing of passwords. Cognite 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 Cognite if there are any queries about the action to take.
- 8.5 The Client indemnifies Cognite from any liability arising from any civil or criminal proceedings instituted against Cognite for any loss or damage.

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

INITIAL
HERE

TERMS AND CONDITIONS

Last Updated : 23 July 2019

8.6 The Client indemnifies Cognite from being held liable for any and all losses the Client may have suffered or from legal action taken against Cognite 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 Cognite’s 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 Cognite will not be responsible for any breach of the email and web hosting agreement caused by circumstances beyond Cognite’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 Cognite reserves the right to take any action it finds necessary to preserve the security and reliable operation of Cognite’s infrastructure. The Client may not do anything, or permit anything to be done, that will compromise Cognite’s security.

8.9 Cognite has systems in place to assist with its critical technical infrastructure to recover from a natural or human induced disaster. However, Cognite does not specify any recovery time and Cognite 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 Cognite’s hosting terms will be seen as a representation that any back-ups of data Cognite have implemented will be successful or in any way will assist with disaster recovery.

ACCEPTANCE

The Client hereby confirms to having read the contents of the Terms and Conditions, understanding it and agreeing with it.

The Client Full Name **The Client Designation**

Signed At **on** **day of**..... **20**.....

Client Signature **Client Company Name**

Witness Full Name **Witness Signature**