



LETHA SHOP Terms of Service

Introduction

These Terms of Service (together with the rest of our Agreement) govern our relationship with you.

They include:

- the duration of our Agreement;
- fees to be paid to Letha;
- when Letha is authorised to monitor communications and content;
- the appropriate and reasonable measures Letha takes to protect the security of your data and our systems;
- when Letha is authorised to suspend or terminate your services; and
- the process followed when resolving disputes.

Summary of our Agreement

Addresses for service: We will use the address you give us as the address to serve legal notices and documents to you.

Acceptance of electronic invoicing: By placing an order through our website, you agree to accept electronic invoices from Letha for the purpose of claiming input tax.

Changing of service: We may change the features or functionality of any Service over time.

Commencement: The Agreement will start when Letha provides you with a username and password.

Governing law: South African law governs our Agreement.

Intellectual property rights: You accept that you will get no rights to our intellectual property on our systems.

Restriction of access to services: If you breach our Agreement, Letha may restrict your access to the Services.

Letha's liability to you is limited. This means that we will not be liable to you for any damages or loss that you may suffer as a result of the fulfilment of the obligations under our Agreement.

Your Content: You will retain all your intellectual property rights to any of your content you host with us.

Your Personal Data: Letha may keep your Personal Data and use it, for specified purposes. For example: to enable us to collect your debit order payment; as well as our internal marketing and contract administration, unless you specifically tell us that we may not do this. For details see our Privacy Policy.

1. Introduction and Disclaimers

1.1. Letha is a web hosting service provider and eCommerce platform that provides a range of web hosting and eCommerce services to its customers. The Services are given subject to our Agreement.

1.2. Letha does not allow any of the following content to be published on its eCommerce platform:

- Content of a pornographic, sexually explicit or violent nature
- Content that could be reasonably considered as discriminatory in any way including by way of sex, race or age discrimination
- Content of an illegal nature (including stolen copyrighted material)
- Content that is defamatory or violates a person's privacy
- Content that involves theft, fraud, drug-trafficking, money laundering or terrorism

If Letha, in its sole discretion, determines that any customer content violates any law, including the Film and Publications Act, 65 of 1966 or this policy, it may:

- Request the customer to immediately remove such content; and/or
- Require the customer to modify such content; and/or
- Without notice, suspend or terminate access to any services; and/or
- Without notice, delete the offending content; and/or
- Notify the relevant authorities of the existence of such content (if required by law or otherwise), make any backup, archive or other copies of such material as may be required by such authorities, disclose such elements of the customer's data as may be requested by the authorities and take such further steps as may be required by such authorities.

1.3. Letha bears no liability for customer content that is in violation of 1.2 above.

1.4. Letha has no interface or relationship with users of the shop fronts established by its customers and accordingly bears no responsibility for order fulfillment.

2. Definitions

We have given the meanings of some words to be consistent. These words usually begin with a capital letter. Singular words include the plural (and vice versa):

Word	Meaning
AFSA	The Arbitration Foundation of Southern Africa (or any replacement).
Agreement	These Terms of Service, the Specific Terms, the Acceptable Use Policy, and Privacy Policy
Controller Responsible Party	The person or organisation who determines the purpose and means of processing data / personal information.
Customer	Is any person identified on the application form for Services or in any addendum;
Customer Data	Any username, password or email address we give the Customer as part of the Services. This excludes Customer Domains we manage as part of the Services;
Data Protection Laws	<p>All data protection and privacy laws and regulations applicable to the processing of Personal Data / Information under our Agreement, including:</p> <ul style="list-style-type: none"> • the Protection of Personal Information Act 4 of 2013 (POPIA) in South Africa (effective from 1 July 2020); • Regulation (EU) 2016/679 ('General Data Protection Regulation' or 'GDPR'); • while it remains in force, the Privacy and Electronic Communications Directive 2002/58/EC on Privacy and Electronic Communications (also known as the ePrivacy Directive or ePD); • any other applicable laws and regulations relating to the processing of Personal Data / Information and privacy; and • if applicable, the guidance and codes of practice issued by any relevant data protection commissioner or supervisory authority.
Terms of Service	These general terms of service governing us providing Services to you
Personal Data Information	Any information about an identified or identifiable natural person ('Data Subject') which is processed in terms of any applicable Data Protection Law.

Process or processing	Any operation which is performed on Personal Data including collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction.
Processor Operator	A Processor is a person or organisation who processes personal data on behalf of a Controller.
Specific Terms	The terms and conditions which supplement the Terms of Service and govern the use of individual Services.
Sub-processor Sub-operator	Any Processor / Operator we use to assist us in fulfilling our obligations in providing the Services.
you or your	The Customer, including a legal entity (such as a company), who enters into an Agreement with Letha.

3. Our Agreement

3.1. Our Agreement governs the contractual relationship between us.

4. Amendment to our Agreement

4.1. Letha reserves the right to make changes to the Agreement at any time without notice. An updated version of the Agreement will be posted on the website.

4.2. It is your responsibility as a diligent user to check any amendment posted on the website.

4.3. If you object to any amendment, you may terminate your relationship with us under clause 15.

5. Customer Status

5.1. The Customer may be an incorporated entity (such as a company or close corporation), trust, partnership, or an individual.

5.2. If a person enters into our Agreement:

- in a representative capacity on behalf of a customer who is an incorporated entity;
- on behalf of an unincorporated entity; or
- in any other representative capacity recognised in South African law, the person warrants that:

- they are legally authorised to do so and indemnifies Letha against any loss or damage that we may sustain resulting from the person's lack of authority; and
 - all the information supplied to Letha at any time relating to the entity, trust, partnership, association or other person who they represent is true, accurate, and complete.
- 5.3. We reserve the right to treat all misrepresentations by you or the person representing you as fraud. The person representing you indemnifies us against any loss or damage that we may sustain resulting from the person's lack of authority.
- 5.4. If we discover that you have fraudulently contracted to receive Services or that your representative has contracted without contractual capacity to do so, we may end our Agreement or Services immediately without any further notice to you and you may not claim any restitution or refund of any amount you have already paid, regardless of whether you have used the Services or not.
- 5.5. When requested, you must give us sufficient proof of the authority of the person who takes any action or executes documents on your behalf for our Agreement. This includes providing proof that the authorised signatory of your bank account has permission to debit your account.
- 5.6. If there is a dispute between individuals or entities you are involved with (including partners, shareholders, trustees, employees), we may act on the representation of a person claiming to be duly authorised to represent you, without having to independently verify the authority.
- 5.7. You indemnify us from any action or inaction based on the representation in 5.6. If, however we ask you to give Letha independent verification of the authority of any individual, you must provide it to us in a format we find reasonably acceptable.

6. Commencement and Duration

- 6.1. Your application is an offer by you to accept Services from Letha.
- 6.2. We will conclude the agreement in Fourways, Gauteng, South Africa.

7. Service Fees

- 7.1. Letha offers a free 2 week trial of the Services. Thereafter you will be billed for the Services on an ongoing basis until You end your subscription with Letha.

- 7.2. Letha's monthly subscription fee is R217 per month exclusive of VAT. This fee may change from time and Letha will give its customers advanced notice of any changes in the subscription fee.
- 7.3. You will be billed in advance for your monthly subscription fee.
- 7.4. Letha charges a commission fee of 4.9% exclusive of VAT. Additionally, Letha charges a R2 transaction fee exclusive of VAT. These service fees may change from time to time.
- 7.5. Where applicable, we will give you a VAT invoice in electronic format. You agree that by submitting an application form to us when making an application for Services, that the application is seen as your confirmation to accept electronic invoices for claiming input tax.
- 7.6. If you pay your service fees by debit order, you authorise us to make the necessary transfers from your designated bank account at the beginning of the month as per your preferred frequency of payment for the duration of our Agreement. You must put the debit order in place within seven days of the Commencement Date. A rejected debit order will accrue a handling fee, per rejection.
- 7.7. We reserve the right to amend or vary the service fees and any amendment or variation of the service fees will be seen as an amendment of our Agreement. If we amend the service fees, Letha will give you at least 30 days prior notice. If you object to any amended service fees, you may terminate your relationship with us under clause 15.
- 7.8. You will not withhold any payment of any amount you owe us for any reason, (except for an actual breach by Letha of our Agreement). In addition, you may not demand any discount, refund (other than under clause 7.7), or reduction in respect of any service fees you owe us.
- 7.9. The service fees exclude Value Added Tax. You agree to pay any increase in Value Added Tax.
- 7.10. If you terminate the Services for any reason after the 14 day free trial period ends, Letha will not refund you any service fees that have been already paid.

8. Monitoring

- 8.1. We monitor our hosting facilities, but not your specific activities. Where we have to intercept communications in accordance with the Regulation of Interception and Provision of Communication-Related Act, 70 of 2003 (“the Monitoring Act”), we will do this according to the requirements of the Monitoring Act.
- 8.2. With specific regard to the monitoring of content that is found on a website that belongs to you and which is hosted by Letha, we have no knowledge of, nor interest in, Customer content hosted by us on your behalf using the Services and further we do not in any way contribute to or approve the content.
- 8.3. If however we determine that any content is in contravention of this Agreement or in violation of any law (including the Films and Publications Act 65 of 1996) or of the Acceptable Use Policy, or if we receive a takedown notice from ISPA, as contemplated in section 77 of the Electronic Communications and Transactions Act 25 of 2002, we may:
- ask you to remove, amend, or modify the content;
 - terminate access to any Services or suspend or terminate any Services without notice;
 - delete the offending content without notice;
 - notify the relevant authorities of the existence of any content, make any back-up, archive, or other copies of any content; or
 - take any further steps as required or requested by any authorities without notice.
- 8.4 We may disclose any content, material, or data (including any of your data) if:
- required by law;
 - lawfully asked to do so by any authorities, including the South African Police Services pursuant to a subpoena under section 205 of the Criminal Procedure Act 51 of 1977; or
 - according to a judicial, administrative or governmental order. We do not have to give you notice.
- 8.5 You will have no recourse against us if we act under this clause and you accordingly waive your right to make any claim or demand, or to institute any legal proceedings against us.

9. Security

- 9.1. We undertake to take all reasonable precautions to secure and make backups of your data.
- 9.2. All Customer Data allocated to you is personal to you and you will be liable for any loss or damage you or third parties have suffered because of your actions or the actions of a person to whom you have disclosed your Customer Data.
- 9.3. If any security violations are reasonably believed to have occurred in connection with your account, we will investigate and, if necessary, change the relevant Customer Data, including access codes and passwords, and notify you immediately.
- 9.4. You indemnify us (hold us harmless) against any claim arising from:
 - your disclosure of your Customer Data to a third person;
 - the use of the Customer Data by a third person; or
 - any resulting action by you or a third party.
- 9.5. We reserve the right to take any action we find necessary to preserve the security and reliable operation of our infrastructure. You may not do anything (or permit anything to be done) that will compromise our security.
- 9.6. We have systems in place to assist our critical technical infrastructure to recover from a natural or human induced disaster. However, we do not specify any recovery time and are not liable for any loss or damage you suffer as a result of a disaster.

10. Payments

- 10.1. Letha offers payment processing services as part of its Services. These payment processing services are provided by third party service providers.
- 10.2. You acknowledge that:
 - Letha is not a bank and the Services you are provided with is a payment processing service rather than a banking service.
 - Letha is not acting as a trustee, fiduciary or escrow with respect to your funds, but is acting only as an agent and custodian.
- 10.3. Letha will deposit customer payments into your bank account as soon as these have been cleared by the relevant payment processing services provider. Funds will be distributed on the Wednesday for all transactions in the previous week commencing Monday and ending Sunday.

- 10.4. Payments processing service providers may withhold customer payments beyond the normal distribution periods for transactions which are deemed suspicious or for accounts conducting high transaction volumes in order to verify that these transactions are genuine. Letha has no responsibility for delays in customer payments where a payments processing service provider withhold customer payments pending completion of payment verification processes.

11. Warranties

- 11.1. We warrant that Letha has the facilities, infrastructure, capacity, and capability to provide the Services.
- 11.2. Despite this warranty, the Services are provided “as is” and “as available”. No warranty of any kind is given, whether express or implied, including warranties of merchantability, title, or non-infringement, except where such a warranty is specifically required by law.
- 11.3. We warrant that we have the systems and infrastructure to secure and backup your data.

12. Intellectual Property Rights

- 12.1. You must comply with all laws that apply to any intellectual property.
- 12.2. You must get our prior written approval before using any of our marks.
- 12.3. You grant us non-exclusive licence to use your marks so that we may exercise our rights or fulfil our obligations under our Agreement.
- 12.4. Other than as specifically provided for in our Agreement, we retain all Intellectual Property Rights employed in or otherwise related to our network infrastructure, business and the provision of any of the Services under our Agreement.

13. Customer Indemnities

- 13.1. You indemnify (hold us harmless) from any liability arising from civil or criminal proceedings instituted against us or for any loss or damage you or a third party have suffered because of any interruption or unavailability of the Services.
- 13.2. You indemnify us and hold us harmless against all losses you have suffered or actions against us as a result of:
 - the use of the Services, or any downtime, outage, degradation of the network, interruption in or unavailability of the Services. This includes 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 you or our 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.

13.3. If we are sued for something that you have indemnified us for, you will take our place in the lawsuit or be liable to pay us back for any costs, damages and expenses including attorneys' fees on the attorney and own client scale (you will be liable to pay our attorney's fees finally awarded against us by a court or agreed to in a written settlement agreement, provided that:

- we notify you in writing as soon as we become aware of the indemnified claim so you can take steps to contest it;
- you may assume sole control of the defence of the claim or related settlement negotiations; and
- we will give you, at your expense, with the assistance, information, and authority necessary to enable you to perform your obligations under this clause.

13.4. You must pay us any amount due under clause 13.3 as soon as we demand payment. If you contest the amount, you must pay the amount into your attorney's trust or give us security to cover the amount, until we have resolved the dispute.

13.5. You indemnify us against any claim, loss or damage that Letha may suffer because of your actions.

14. Suspension / Withdrawal of the Service

14.1. Letha may temporarily suspend its Service to repair, maintain, upgrade, modify, replace or improve any of its Services. Where circumstances permit, Letha will provide prior notice of any service suspension to Customers. However, Letha will not be held liable for any resulting loss or damage suffered as a result of the service suspension.

14.2. We reserve the right to withdraw the Service at any time at its entire discretion, particularly in the event of any failure to pay. Letha will not be held liable for any resulting loss or damage suffered as a result of the Service withdrawal.

15. Termination

- 15.1. We reserve the right to terminate this Agreement and the Service on seven (7) days' written notice to you should you fail to pay your Service Fees within seven (7) days of the fees becoming due and payable.
- 15.2. You may terminate this Agreement and the Service on 30 days written notice to Letha via email. We will confirm your request for termination via return email.
- 15.3. If you give Letha notice of termination in any manner other than as specified above you may find that the notice was invalidly given and will not have any effect.
- 15.4. If you breach our Agreement, we may, without prejudice to any other rights that Letha may have, terminate or suspend your use of the Services and claim immediate payment of all outstanding charges due to us.
- 15.5. In all instances, we may retain all Service Fees you have already paid and recover all of our costs associated, including legal costs on an attorney and own client scale (you will be liable to pay our attorneys' fees) with your breach.
- 15.6. We will return your content and data upon termination of the Agreement and the Service.
- 15.7. We will terminate the Agreement and the Service immediately if you publish unacceptable content.

16. Force Majeure

We will not be responsible for any breach of our Agreement caused by circumstances beyond our control, including fire, earthquake, flood, civil strike, compliance with government orders, failure of any supplier of electricity as well as no electronic communication service etc.

17. Resolving disputes

- 17.1. Any dispute concerning our Agreement (including interpretation and application) exists once a party notifies the other in writing, detailing the nature of the dispute and requesting that it be resolved as per this clause. The parties will first try to resolve the dispute informally by email, phone or other methods.
- 17.2. If informal dispute resolution negotiation fails, we may refer the dispute to conciliation (talks in which an agreed neutral third party tries to help the parties agree on how to end the dispute), failing which we may refer the dispute to arbitration (a hearing after which a neutral third party

makes a binding decision about the dispute) (including any appeal against the arbitrator's decision) under AFSA's latest rules for expedited arbitrations and you must participate. You cannot make us arbitrate. The arbitration will be held in Cape Town and conducted in English. The parties will agree and appoint one arbitrator. If the parties cannot agree on the arbitrator within 10 business days after the referral, the Secretariat of AFSA will appoint the arbitrator.

- 17.3. Either party may only bring a claim against the other in their individual capacity and not as a member of any class.

18. Exclusion and Limitation of Liability

- 18.1. Letha will not be responsible for any indirect, incidental, special, or consequential damages or losses arising from our Agreement. This includes loss of profits, revenue, anticipated savings, business transactions, goodwill or other contracts. It is irrelevant if this is due to negligence (carelessness) or breach of contract.
- 18.2. Our total liability to you is for direct damages up to a maximum amount of three months of your subscription fees.
- 18.3. Our liability for direct damages under clause 18.2 will be excluded where we are held liable because of your use of any third-party services or products which you accessed together with the Services, but which we did not provide to you.
- 18.4. This clause will apply even if you advised Letha of the possibility of loss of damage prior to its occurrence.

19. Notices

- 19.1. You must send all notices to Letha, whether for court process or other documents or communications to Spaces Design Quarter, Leslie Rd, Fourways 2191 or info@letha-local.com
- 19.2. We may give all notices to you by email to the email address you provided to us on the application form when you first subscribed for the Services.
- 19.3. Any notice or communication required or permitted to be given under our Agreement will be valid and effective only if in writing.
- 19.4. All notices you sent to us which are:
- sent by prepaid registered post will be deemed to have been received 14 days after date of postage; or
 - delivered by hand during ordinary business hours at the physical address or via email, will be deemed to have been received on the day of delivery.

20. Data Processing

Roles of the parties under Data Protection Law

- 20.1. Depending on the particular activity, we act as both a Processor | Operator and a Controller | Responsible Party.
- 20.2. We act as the Controller | Responsible Party of your Personal Data | Information when you sign-up to use our Services. We collect and store your Personal Data | Information for specific purposes including improving our service offering and increasing service efficiency. Please refer to our Privacy Policy for more information.
- 20.3. We act as the Processor | Operator and you are the Controller | Responsible Party of the Personal Data | Information that we process on your behalf when we provide Services to you in terms of the Agreement. You are solely responsible for determining the purpose for which, and the manner in which Personal Data | Information is processed.

21. General

- 21.1. **Entire agreement:** The Agreement constitutes the entire agreement between the parties.
- 21.2. **No Variation:** No changes to our Agreement made by you are effective unless in writing and signed by the authorised signatories of both parties.
- 21.3. **Waiver** (giving up rights): Any favour we may allow you will not affect (or substitute) any of our rights against you.
- 21.4. **Severability:** If any term is void (invalid), unenforceable, or illegal, the term may be severed (removed) from and will not affect the rest of our Agreement if it does not change its purpose.
- 21.5. **Applicable Law:** South African law governs our Agreement.
- 21.6. **Survival:** Despite termination of our Agreement, any clause, which, from the context, contemplates on-going rights and obligations of the parties, will survive the termination and continue to be of full force and effect.