

Terms of Sale



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1. Introduction

These terms are the general terms of the relationship between us and you. The terms cover any transactions where we provide goods to you. Our Website Terms of Use, Privacy Policy, Returns Policy and Security Policy are incorporated into these terms by reference.

2. Definitions and interpretation

2.1. Definitions

In the agreement:

AFSA means the Arbitration Foundation of Southern Africa (or its successor or body nominated in writing by it in its stead);

agreement means the agreement between us and you, consisting of the terms the parties enter into or agree to;

authorised user means you or a user in your employ where you are a juristic person, who has been assigned credentials;

business day means any day other than a Saturday, a Sunday, or a holiday (including a public or bank holiday) in the jurisdiction where our entity that entered into the agreement is organised;

business hours means our normal business hours on business days;

calendar day means a day counted from midnight to midnight. It includes all days of the month, including weekends (Saturday and Sunday), and public holidays;

credentials means a unique username and password that has been assigned to an authorised user;

existing material means any code, forms, algorithms, or materials developed by or for either party independently and outside of the agreement and provided during the course of the agreement;

fees means the fees, charges, or purchase consideration that you will pay to us in respect of goods we provide to you;

goods means any goods that we supply to you;

order means a goods order agreed to by both the parties describing the specific goods that we will provide to you;

our technology means any technology that we have created, acquired or otherwise have rights in and may, in connection with the performance of our obligations under the agreement, employ, provide, modify, create or otherwise acquire rights in and includes any:

- concepts or ideas;
- methods or methodologies;
- procedures or processes;
- know-how or techniques;
- function, process, system, data, or object models;
- templates;
- the generalised features of the structure, sequence and organisation of software, user interfaces and screen designs;
- general purpose consulting and software tools, utilities, routines or frameworks;
- logic, coherence and methods of operation of systems; and
- patches or enhancements to open source libraries;

personnel means any representative, including any director, employee, agent, affiliate, consultant, or contractor;

related and related persons means natural and juristic persons who are connected to one another in the manner contemplated in sections 2 and 3 of the Companies Act 71 of 2008;

sign means the handwritten signature, an advanced electronic signature, or an electronic signature that the parties agree to use, of each of our duly authorised representatives;

signature date means the date of signature by the party signing last;

tax means any:

- tax (including value added tax, income taxes, pay-as-you-earn tax, or other taxes levied in any jurisdiction);
- duty (including stamp duty);
- tariff, rate, levy; or
- any other governmental charge or expense payable;

terms means the terms, consisting of:

- these terms; and
- any other relevant specific terms, policies, disclaimers, rules and notices that the parties agree on, (including any that may be applicable to any specific goods);

third party contractor means any contractor, supplier, vendor, or licensor of a part of the goods, which is not a party to the agreement;

we, us, or our means our organisation, the vendor that enters into the agreement with you;

writing means the reproduction of information or data in physical form (includes handwritten documents, hard copy printouts and fax transmissions) or any mode of reproducing information or data in electronic form that the parties agree to use (like pdf), but excludes information or data in the form of email;

you or your means the customer that orders our goods; and

your data means your data (including information about an identifiable person) that:

- you provide (or any third party on your behalf provides) to us; or
- we generate, process, or supply to you in providing the goods; but excludes any derived data that we create for our own internal purposes or which is proprietary or confidential to us or our third party contractors, or which belongs to third parties.

2.2. Interpretation

All headings are inserted for reference purposes only and must not affect the interpretation of the agreement. Whenever “including” or “include”, or “excluding” or “exclude”, together with specific examples or items follow a term, they will not limit its ambit. Terms other than those defined within the agreement will be given their plain English meaning. References to any enactment will be deemed to include references to the enactment as re-enacted, amended, or extended. A reference to a person includes a natural and juristic person and a reference to a party includes the party’s successors or permitted assigns. Unless otherwise stated in the agreement, when any number of days is prescribed in the agreement the first day will be excluded and the last day included. The rule of construction that an agreement must be interpreted against the party responsible for its drafting or preparation does not apply. GMT +2 will be used to calculate any times.

3. Duration

The terms commence on acceptance and continue until terminated, or the goods are delivered to you.

4. Orders

4.1. Capacity

You represent and warrant that you (and any person who places an order):

- are old enough under applicable law to enter into the agreement;
- are legally capable of concluding any transaction;
- possess the legal right, full power, and authority to enter into the agreement;
- are authorised to use the credentials required for any account; and
- will submit true, accurate and correct information to us. If you are younger than 18 years of age, you warrant that you have the consent of your legal guardian to enter into the agreement or that you have obtained legal status in another manner.

4.2. Invitation to do business

The marketing of the goods by us is merely an invitation to do business or for you to make an offer to procure goods. The parties only conclude a valid and binding order when we accept the offer made by you. Unless otherwise agreed in writing or we accept an offer earlier, we only accept an offer relating to goods, when we dispatch the goods. If we only ship part of the goods relating to an offer, we only accept that portion of the offer. We may accept or reject any offer. If we do not accept any offer, then we will refund any monies already paid by you.

4.3. Fees

Despite our best efforts, the stated fees may be incorrect. We will confirm the fees for any goods when we accept your offer.

4.4. Availability

We may not always have the goods on which you make orders in stock. If the goods are not in stock, you may cancel the order or make another order on the part of the goods that are in stock.

5. Goods

5.1. Sale

We sell the goods to you who purchases them on the terms of the agreement.

Our products are handmade so colours, designs and sizes may vary

5.2. Countries

You may only make offers for goods for delivery to the countries specified by us. If your delivery or billing address is not amongst those specified, you must not make an offer. We are only able to sell into the countries specified, and we are only able to deliver to those countries.

5.3. Delivery and packaging

Unless otherwise agreed in an order the goods will be supplied on the following basis:

- we will pack the goods in accordance with our packaging specifications for the goods;
- in the absence of any packing specifications, we will package the goods suitably to ensure that damage in transit does not occur due to incorrect packaging;
- the fees will exclude the cost of packaging;
- unless otherwise agreed in writing, we will select the specific mode of delivery for the goods; and
- the delivery costs will be for your account.

5.4. Time until dispatch

Once we receive an offer, we will endeavour to dispatch the goods as soon as reasonably practicable (which may be longer than 30 calendar days) to the address specified in the offer. We will try to adhere to the estimated delivery dates but accept no liability for failing to do so. You may not withdraw any offer due to a delay in delivery.

5.5. Risk and ownership

All risk of loss or damage to the goods will pass to you upon physical delivery of the goods to your delivery address. Ownership in the goods will only pass to you upon full payment of the fees.

5.6. Warranty

The goods may be subject to any warranty indicated in the description of the goods appearing on the accompanying documentation or packaging. Please review those documents carefully. You will have the same rights against us as we have against the supplier regards defects in the goods, the intention being that our liability to you will be co-extensive with the right of recourse we have against the supplier. We will provide a copy of any warranty on request. To the extent legally possible, we assign to you the benefit of any supplier warranties that a supplier may give to us regards the goods. You may not waive any of our common law rights as against the supplier.

5.7. Sales representatives

None of our sales representatives have the authority to bind us and no representation, warranty or any other statements made or given by any of our sales representatives will be binding on us, unless given in writing and signed by our duly authorised representative.

5.8. Resale and exports

If you wish to resell or export any goods, you must obtain all required consents under all applicable laws and regulations that may affect or regulate such resale or export.

6. Registration

- 6.1. **Registration required.** You must register to purchase goods through the website. We reserve the right not to enter into the agreement with you (reasons could include for example that you have previously been suspended from using our website or you pose an unacceptable level of risk for us).
- 6.2. **Registration information. You must:**
- provide your full legal name, a valid email address, and any other information requested by us to complete the registration process;
 - have the legal capacity to conclude legally binding contracts;
 - possess the legal right, full power, and authority to enter into the agreement;
 - be old enough under applicable law to enter into the agreement;
 - submit true, accurate and correct information to us;
 - If you are juristic person, the person making application on your behalf must also be duly authorised to conclude contracts on your behalf, if you are juristic person.
- 6.3. **Identity verification.** It is important for us to know who we are doing business with online. You authorise us to make any enquiries we consider necessary to verify your identity. This includes:
- us conducting a credit check; or
 - you providing us with documentation such as your registration documents if you are a juristic person, or the front page of your ID book or proof of your address; and
 - us verifying this against third party databases.

7. Accounts and Security

- 7.1. **Guest user.** When you order goods on our store you can either order goods as a guest user or register on our website to access your account.
- 7.2. **Credentials.** When registering, you will be required to select your credentials which will enable you to sign into your account on our website. Only you may use your credentials.
- 7.3. **Choice of password.** You must choose a password. It must be at least 10 characters in length. It should be difficult to guess. For example, don't use words found in a dictionary, derivatives of your user ID and common character sequences such as "123456". Also, don't use personal details such as your spouse's name, car registration number, ID number, passport number and birthday, unless accompanied by additional unrelated characters. The password you choose should also not be any part of speech including, proper names, geographical locations, common acronyms, and slang.
- 7.4. **Access.** Only authorised users may access the website by using their credentials.
- 7.5. **Authorised user obligations.** Each authorised user agrees:
- to keep their credentials secure;
 - not to disclose their credentials to any other person;
 - not to provide access to any person;
 - to secure all data under their control;
 - not to interfere with the functionality or proper working of the website; and
 - not to introduce any viruses, worm, logic bomb, trojan, wares, potentially unwanted program (PUP) or other malicious software into the website.

- 7.6. Your instructions.** Each authorised user is responsible and liable for activities that occur under their account. You authorise us to act on any instruction given by an authorised user, even if it transpires that someone else has defrauded both of us, unless you have notified us in writing prior to you acting on a fraudulent instruction. We are not liable for any loss or damage suffered by you attributable to an authorised user's failure to maintain the confidentiality of their credentials.
- 7.7. Payments.** Our security obligations relating to any payment systems we might use are dealt with in our security policy, the terms of which are incorporated here.
- 7.8. Monitoring security.** We reserve the right to take whatever action we deem necessary to preserve the security and reliable operation of our systems and you undertake that you will not do or permit anything to be done which will compromise our security. If:
- we are unable to verify any information you provide to us; or
 - we reasonably believe that your activities pose a significant credit or fraud risk to us or our other customers, or may cause financial loss or legal liability for us, our other customers, or you
- then we shall be entitled to suspend or terminate your use of the website.
- 7.9. Deactivation or deletion.** You may deactivate or delete your account, for any reason.

8. Data protection

8.1. Location of your data

We are able to provide the website in multiple locations that are located in different countries. Your data will remain in whatever location you place it, unless we have to transfer it across a country border to enable us to comply with our obligations under the agreement.

8.2. Privacy and protection of personal information obligations

We are responsible for complying with our obligations and you are responsible for complying with your obligations under applicable laws governing your data. The parties both acknowledge that they are not investigating the steps the other is taking to comply with any applicable privacy and protection of personal information laws.

8.3. Responsible party

You remain the responsible party for determining the purpose and means of our processing of your data, including that processing will not place us in breach of any laws.

8.4. Trans-border flows of your data

You consent to us transferring your data across a country border to enable us to comply with our obligations under the agreement. We will ensure that any transfer of your data across a country border complies with the applicable laws.

8.5. Indemnity

You agree to indemnify, defend, and hold us harmless (and those related to us and our personnel, co-branders or other partners) from and against any claim, demand, loss, damage, cost, or liability (including legal costs) arising out of or relating to you failing to comply with your obligations under this clause. If permissible under applicable law, legal costs will be on an attorney and own client basis.

8.6. Access

On a party's reasonable written request, the other party will provide the requesting party with the information that it has regarding your data and its processing that is necessary to enable the requesting party to comply with its obligations under this clause and the applicable laws. The requesting party will reimburse the other party for its reasonable charges for its assistance.

8.7. Preservation of integrity of your data

Both parties will take reasonable precautions (having regard to the nature of each of their obligations under the agreement), to preserve the integrity of your data and prevent any unauthorised access, corruption or loss of your data.

8.8. Return of data

We will return to you in the form in which it was received all the other party's data or information provided to the party for the purpose of the performance of the relevant order, on request.

9. Intellectual property

9.1. Your data

You own all your data. We do not own your data or other third party content used as part of the website. All title, ownership rights and intellectual property rights in and to the content submitted through the website belong to you or the applicable content owner and may be protected by applicable copyright or other law.

9.2. Your data license

When you upload your data to the website, you give us a worldwide license to use, host and store your data, solely for purposes of providing the goods.

9.3. Retention of rights

We have created, acquired or otherwise obtained rights in our technology and despite anything contained in the agreement, we will own all right, title, and interest in our technology.

9.4. Use of our technology

If we utilise any of our technology in connection with our performance under the agreement, our technology will remain our property and you will not acquire any right or interest in it.

9.5. Trade marks

Our logo and sub-logos, marks, and trade names are our trade marks and no person may use them without permission. Any other trademark or trade name that may appear on our marketing material is the property of its respective owner.

9.6. Restrictions

Except as expressly permitted under the agreement, the goods may not be: - reverse engineered or copied; or - reproduced or distributed.

9.7. Prosecution

All violations of proprietary rights or the agreement will be prosecuted to the fullest extent permissible under applicable law.

10. Confidential information

10.1. Responsibility to keep information confidential

Each party must keep confidential any information it receives from the other party or under this agreement.

10.2. The receiving party's responsibilities

The party that receives confidential information agrees to protect the interests of the party it is from, and will:

- only use it to comply with its responsibilities under this agreement;
- only give the information to any of its employees or agents that need it, and only give as much of it as they need;
- use reasonable security procedures to make sure employees or agents keep the information confidential;
- get promises of confidentiality from those employees or agents who need access to the information;
- not reveal the information to anyone else; and
- not use it for any purpose other than this agreement.

10.3. End of this agreement

At the end of an agreement, the parties will give back to the other all originals and copies of confidential information of the other that they have. If the other agrees, they may destroy the confidential information they have.

10.4. Exceptions

These responsibilities will not apply to any information that:

- is lawfully in the public domain (available to the general public) when a party received it;
- lawfully becomes part of the public domain afterwards;
- is given to the receiving party afterwards by a different person who is allowed to reveal the confidential information; or
- is given to comply with a court order or other legal duty.

10.5. Indemnity

You indemnify us against any loss or damage that we may suffer because of a breach of this clause by you.

10.6. Survival

This clause about confidential information is separate from the rest of this agreement and remains valid for five years after the end of this agreement.

11. Our warranties

We warrant that:

- we have the legal right and full power and authority to execute and deliver, and to exercise our rights and perform our obligations under the agreement; and
- we and our personnel will not knowingly introduce any malicious software into your material or your system.

12. Disclaimer of warranties

12.1. Disclaimer

You use our goods at your sole responsibility and risk. We provide the goods on an "as is" and "as available" basis. Except for the warranties given in this agreement and to the extent allowed by law, we expressly disclaim all representations, warranties, or conditions of any kind, whether express or implied,

including any implied warranties or conditions of satisfactory quality, no latent defects, merchantability, fitness for a particular purpose, accuracy, system integration, quiet enjoyment, title, and non-infringement.

12.2. Exclusion of liability

Despite any warranty we give, we will not be liable regards any defect arising from negligence, failure to follow our instructions (whether oral or in writing) or misuse.

13. Your warranties

You warrant that:

- **you have not been induced to enter into the agreement by any prior representations, warranties or guarantees (whether oral or in writing), except as expressly contained in the agreement;**
- **by entering into an order, you are not acting in breach of any agreement to which you are a party;**

and you agree to indemnify, defend, and hold us harmless (and those related to us and our personnel, co-branders or other partners) from and against any claim for damages by any third party as a result of the breach of these warranties, including all legal costs. If permissible under applicable law, legal costs will be on an attorney and own client basis.

14. Fees and payment

14.1. Due dates

You will be liable for and pay the fees specified, promptly on the due date, without any deduction, set off, or demand and free of exchange in the currency specified in the order.

14.2. Manner of payment

You must make payment in the manner specified.

14.3. Appropriation

We may appropriate any payment received from you towards the satisfaction of any of your indebtedness to us under the agreement.

14.4. Withhold payment

We understand that you may want to take the law into your own hands in the event of a dispute, but you may not withhold payment of any amount due to us for any reason.

14.5. Tax

All fees include any tax, which will be payable where applicable by you in addition to the fees.

15. Limitation of liability

15.1. Direct damages limited

To the extent permitted by applicable law, regardless of the form (whether in contract, delict or any other legal theory) in which any legal action may be brought, our maximum liability to you for direct damages for anything giving rise to any legal action will be an amount equal to the total fees already paid by you to us for the goods related to the claim. The aggregate amounts for all claims will not be greater than the maximum amount.

15.2. Indirect damages excluded

To the extent permitted by applicable law, in no event will we (or our personnel) be liable for any indirect, incidental, special or consequential damages or losses (whether foreseeable or unforeseeable) of any kind (including loss of profits, loss of goodwill, damages relating to lost or damaged data or software, loss of use, damages relating to downtime or costs of substitute products) arising from the agreement.

15.3. Exclusions

The limitation contained in this clause will not apply to any breach by a party of the other party's proprietary or confidential information or intellectual property or damages arising from a party's gross negligence.

15.4. Liability

Without limiting liability, neither party will be liable to the other for any loss that it may suffer as a result of theft, fraud, or other criminal act by a party or its personnel.

16. Breach

If a party:

- does not fix any breach of this agreement (failure to comply with it) within seven days of receiving written notice from the other party to do so;
- breaches this agreement materially twice or more in any six month period;
- is insolvent (bankrupt), or has some legal disability, for example, if they are placed under administration;
- takes steps to deregister itself (close down) or is deregistered;
- makes any settlement or arrangement with its creditors; or
- fails to pay a court order against it (does not satisfy a writ of execution) for more than one million rand, within 21 days;

Then the other party may, without prejudice to any of its rights:

- claim specific performance of this agreement (make the party comply with this agreement); or
- immediately cancel this agreement in writing; and
- claim damages from the other party, including any claim for any fees already due.

17. Termination

17.1. Termination for good cause

We may immediately terminate this agreement at any time by giving you notice in writing if:

- we discontinue the goods;
- we believe providing the goods could create an economic or technical burden or material security risk for us;
- termination is necessitated by us having to comply with any applicable law or requests of governmental entities; or
- we determine that the provision of any goods to you has become impractical or unfeasible for any legal or regulatory reason.

18. Notices and domicile

18.1. Notices

The parties will send all notices, authorisations, disclosures, acknowledgements, or requests by hand delivery, prepaid registered post, fax, or email to an address or number given in the relevant order.

18.2. Service (delivery) address for legal documents

Each party chooses its street addresses and numbers as its domicilium citandi et executandi (its address for the service of any document used in legal action) for this agreement.

18.3. Change of addresses or numbers

Each party may change the addresses or numbers in the specific terms to any other addresses or numbers by writing to the other party 14 days before the change.

18.4. Deemed delivery

Notice will be considered to be delivered on the date shown on any hand-delivered, prepaid registered post, courier, fax or email confirmation of delivery.

18.5. Notice actually received

If a party actually receives any notice or other communication, this will be good enough.

19. Force majeure

19.1. Parties not liable

No party will be responsible for any breach of this agreement caused by circumstances beyond its control, including flood, fire, earthquake, war, tempest, hurricane, industrial action, government restrictions, or acts of God.

19.2. Right to cancel

If a party cannot fulfil a material (significant) part of its responsibilities under this agreement for more than 60 days because of force majeure, the other party may cancel this agreement by written notice.

20. Assignment and subcontracting

20.1. No assignment

No party may delegate its duties under this agreement or assign its rights under this agreement, in whole or in part. We may assign this agreement to any successor or purchaser of our business or some of our assets.

20.2. Exception

Despite this clause, we may cede and assign all rights and obligations under this agreement to a related person without your prior written consent, provided that we notify you within a reasonable time of the event occurring.

20.3. Our third party contractors

We may sub-contract or delegate our obligations under this agreement to third party contractors. We will remain liable for performance of the third party contractors. No one may require us to disclose the terms (including payment terms) of any sub-contract entered into with respect to our obligations under this agreement.

21. General

21.1. Entire agreement

We may have discussions with each other relating to this agreement, but the agreement is the entire agreement between the parties on the subject. It does not include anything outside of the agreement.

21.2. Electronic communications

To the fullest extent permitted by law, you consent to receiving all notices and other communications from us electronically. Electronic communications may be posted on our website or sent to the email address we have on record for you. Please print a copy of each communication and retain it for your records.

21.3. Changes

We may change the terms at any time and where this affects your rights and obligations, we will notify you of any changes by placing a notice in a prominent place on our website or by email. If you do not agree with the change you must stop using the services. If you continue to use the services following notification of a change to the terms, the changed terms will apply to you and you will be deemed to have accepted such terms.

21.4. Waiver (giving up of rights)

Any favour we may allow you will not affect or substitute any of our rights against you.

21.5. Severability

If any term is void (invalid), unenforceable, or illegal, the term may be severed (removed) from and will not affect the rest of this agreement if it does not change its purpose.

21.6. Governing law

South African law governs this agreement.

21.7. Jurisdiction

You consent to the jurisdiction of the Magistrate's Court in respect of any action or proceedings that we may bring against you in connection with this agreement, even if the action or proceedings would otherwise be beyond its jurisdiction without prejudice to our right to institute any action in any other court having jurisdiction.

21.8. Non-exclusivity

We may provide any goods or services to any other person or entity. We may exploit our intellectual property subject to our confidentiality obligations.

21.9. Costs

Each party is responsible for its own costs of drafting and negotiating this agreement.

21.10. Publicity

A party will not make any announcement or statement to the press about this agreement, without first getting written permission from the other party.