

ZA-TCmkt03

**Website terms and conditions template: marketplace for goods; seller side**

Terms and Conditions applicable to a seller of goods using  
[www.factoryshopssa.co.za](http://www.factoryshopssa.co.za)

These terms and conditions are the contract between you and [www.factoryshopssa.co.za](http://www.factoryshopssa.co.za) ("us", "we", etc). By visiting or using Our Website, you agree to be bound by them.

[www.factoryshopssa.co.za](http://www.factoryshopssa.co.za) is a trade name of FSSA (PTY) Ltd, company number 2018 / 446919 / 07, incorporated in the Republic of South Africa, whose registered office address] is at Unit 31, Millennium Business Park, Edison Way, Century City, Cape Town, South Africa.

## 1. Definitions

"Content"	means the textual, visual or audio content that is encountered as part of your experience on Our Website. It may include, among other things: text, images, sounds, videos and animations. It includes content such as advertising material, and all other product or service related material Posted by you.
"Our Website"	means any website of ours, and includes all web pages controlled by us.
"Post"	means place on or into Our Website any Content or material of any sort by any means.
"Product"	means any item offered for sale by you on Our Website, whether physical goods or downloads.
"Service"	means all of the services available from Our Website, whether free or charged.

## 2. Our contract

- 2.1 The relationship between us is solely that:
  - 2.1.1 in consideration of a fee charged by us, we provide for you an Internet market place as an arm's length contractor.
  - 2.1.2 we act as your agent solely in the collection of money paid by your buyer.
  - 2.1.3 we are not partners or joint venturers.
- 2.2 If you place a Product for sale on Our Website, you do so subject to these terms.

- 2.3 When you place a Product on Our Website, you will be bound to provide all the information required by the Electronic Communications and Transactions Act 2002 (“the Act”).
- 2.4 Although we are not a party to your contract with a buyer introduced to you via Our Website, we shall remove your Products from offer if a customer or site visitor has a valid complaint against you.
- 2.5 We may change this agreement in any way at any time. The version applicable to your contract is the version which was Posted on Our Website at the time that the contract was made.
- 2.6 Subject to this agreement and to the procedures set out on Our Website, you may enter a Product for sale through Our Website.

### **3. If your customer buys as a consumer**

- 3.1 You authorise us to take any action that may reasonably be required from time to time, to protect your interests and ours in connection with a breach or possible breach of the Act.
- 3.2 Because we are not your agents except to market your Products and take payment, all your obligations under the Act must be fulfilled by you. That means the information you provide to us by entry or upload into Our Website must be clear, sufficient and complete, to comply with the Act.
- 3.3 On Our Website, we will provide a route to allow a customer to deal directly with you. That will include options relating to delivery and cancellation of his order.
- 3.4 We will also provide regulatory information relating to returns and cancellation. We expect you to comply with those terms unless the Product you sell, or your business model, requires different terms. The terms on Our Website will be communicated only as information to the buyer and not as contract terms.
- 3.5 Because every reference to a Product of yours, made by you or by us, may be treated by a consumer as contractual, you agree:
  - 3.5.1 to make clear any contractual term in content you place on Our Website, which may be different from any term on Our Website.
  - 3.5.2 that no content on your website will contradict content you place on Our Website.

## **4. Your Product placement**

You agree that you will:

- 4.1 not place any Product for sale which is not of merchantable quality or which requires for its setup or use a level of technical expertise which is not fully explained to a customer before purchase.
- 4.2 immediately to remove from sale on Our Website any Product which for any reason, you are unable to supply.
- 4.3 not re-place any Product we remove from offer for sale.

## **5. Delivery**

- 5.1 Deliveries of hard copy and physical Products will be made from your premises, by post or by a carrier instructed by you/us subject to the contract between you and your customer.
- 5.2 You will notify both the customer and [www.factoryshopssa.co.za](http://www.factoryshopssa.co.za) by email on the date of sending, that the Product has been despatched and of the expected delivery date.
- 5.3 If at any time, any customer notifies you/us of non-delivery within the time scale offered by you on Our Website, you will investigate immediately and tell the customer/us that you are doing so, what you are doing, and when you expect to be able to deliver the Product.
- 5.4 In the absence of information to the contrary, you agree to despatch a Product within three days of notification of order by us, by a method likely to reach the buyer within a further seven days.
- 5.5 If it is apparent that a customer has not received a Product within 14 days of the expected delivery date, you/we will refund money paid, including any delivery charge. This is a condition of your contract with us because our reputation, as well as yours, is at stake in those circumstances.
- 5.6 FSSA (PTY) Ltd or our nominated courier does not accept any responsibility for the loss or damage of goods. It is up to the seller to maintain insurance to cover the cost for all goods during transport.

## **6. Products returned**

You agree that you will at all times:

- 6.1 reply promptly and in any event within 48 hours to any customer/our message or other correspondence;
- 6.2 comply with the law relating to all aspects of the contract between you and your customer, relating in particular your obligations to provide full information and accept cancellation and returns. However, you may also offer more favourable terms to your customers as per your own returns and refunds policy set out on your website or otherwise in your terms and conditions;
- 6.3 when you have an obligation to return money to a customer for any reason, you will do so immediately, as provided by the returns & refunds policy set out on Our Website;
- 6.4 in the event that a Product ordered is not available, you will immediately tell your customer/us and refund any money paid;
- 6.5 comply with the [www.factoryshopssa.co.za](http://www.factoryshopssa.co.za) procedures relating to satisfaction of an order, Products returned and payment, as set out on Our Website from time to time;
- 6.6 please provide information to us in respect of any claim for non-delivery and any dispute as to payment, so as to enable us to identify the possibility of fraud.
- 6.7 all costs (ie courier charges) associated with the return of a product is for the account of the seller and will be deducted from the amount owed to you.

## **7. The selling procedure**

- 7.1 [www.factoryshopssa.co.za](http://www.factoryshopssa.co.za) is not responsible for the fulfilment of your contract to sell a Product.
- 7.2 You agree that a contract to sell a Product offered by you is a firm and binding contract as soon as your customer's payment has been accepted by our payment service provider.
- 7.3 Subject to discounts and promotions, Products are offered for sale at a fixed price. VAT may be due and will be either included in the price or shown separately. If not shown, it will not be charged.
- 7.4 All Products may be subject to a delivery charge which will be shown at the pay point. The delivery charge will be fixed by you/us for each item offered for sale. It may be changed at your/our discretion. Once you have sold a Product, the delivery charge offered by you/us at the time of purchase cannot be increased.

- 7.5 Products will be offered for sale and sales made, subject to the terms and conditions applicable to buyers. You accept and endorse these terms and agree to comply in all respects with the corresponding obligations of a seller. You may view the buyer's conditions on Our Website at any time.
- 7.6 We shall send you a message by email at the time of each sale, providing full information about that sale.
- 7.7 You agree to provide an adequate stock of any Product placed by you for sale through Our Website and to tell us, through your control panel, if at any time your supply is exhausted.

## **8. Value added Tax**

- 8.1 Fees and commissions specified on Our Website or elsewhere are exclusive of VAT.
- 8.2 If you are located in the Republic of South Africa, we will show and retain the amount of VAT due on our charge for our services in addition to the amount of commission due to us.
- 8.3 [www.factoryshopssa.co.za](http://www.factoryshopssa.co.za) has the right to demand additional information about your business so far as it may affect your VAT registration, at any time, from you or from a governmental authority.

## **9. Our commission and payment to you**

- 9.1 We sell your Product at the price you place on it, subject to these terms and also the requirements we set out on Our Website from time to time.
- 9.2 Our fees and commissions are payable on demand. You irrevocably authorise us to deduct them from sums paid to us by your buyer.
- 9.3 Our Website selling system is an automated system which can be followed by you through a "control panel".
- 9.4 The proportion of each sale receipt retained by us is as set out elsewhere or on Our Website.
- 9.5 Where our commission is based on a percentage of the sale price, you may not artificially inflate the delivery charge and reduce the price of the Product in order to reduce our commission. If we believe that you do so, we may immediately cease to deal with you.

- 9.6 We will pay you within 14 days of confirmed despatch of order.
- 9.7 If you have a bank account located in the Republic of South Africa, we will transfer money via the Internet, in full.
- 9.8 If you do not have an account in the Republic of South Africa, we will transfer money in any sum at your request and at your cost. We will pay for the transfer if the sum due is over the limit specified from time to time on Our Website pages or elsewhere.
- 9.9 We will send you an invoice for our charges.
- 9.10 If we do or could earn interest on any cash balance in our control for the period between payment by a customer and our accounting to you, we are free to keep that interest and have no obligation to account for it to you.
- 9.11 If an action by a buyer results in a charge back to our account, you agree that we may deduct the sum charged back together with any fee paid to our service provider and bank, from any sum due to you, at or after that time.
- 9.12 If you or we accept any cancellation and consequently refund money to a customer, we are not obliged to repay commission to you.
- 9.13 If in our discretion if we believe that your performance as a seller results in a significant number of charges back and / or buyer disputes or if we believe you are in breach of this agreement, we are free to hold back payments to you until we are satisfied that disputes have been settled and / or breach rectified.

## **10. Advertising your Product**

If you accept our offer to advertise, market or promote your product, the following conditions apply.

- 10.1 We may use the services of a specialist Internet marketing business associated with [www.factoryshopssa.co.za](http://www.factoryshopssa.co.za)
- 10.2 Without prior consent of the other; neither we nor you will contract with any other person or company for specialist services. Here your obligation is limited to the extent of the price charged and due to us.
- 10.3 The price charged to you will include all payments we make to others.

- 10.4 The cost of work ordered by you is payable in full, in advance. If you so request us, by indication on Our Website, we will deduct the cost from your account.
- 10.5 We give no guarantee as to the success of any advertising placed.
- 10.6 We shall receive no secret commission on advertising services. But note that the service supplier is associated with us.

## **11. Your Product warranties**

- 11.1 You warrant that any Product you place on Our Website for sale:
  - 11.1.1 is not: illegal, obscene, abusive, threatening, defamatory, invasive of privacy, infringing of intellectual property rights, or otherwise injurious to any third party;
  - 11.1.2 does not offend against the law of any country whose citizens might purchase it;
  - 11.1.3 is not intended primarily to advertise any business, except your business.
  - 11.1.4 Is in full compliance with the terms and conditions of the relevant Brand Owner, in the case you are not the Brand Owner and that you are legally allowed to distribute/sell their products.
- 11.2 You warrant that you own the copyright of any Content you place on Our Website for sale, or that you have the permission of the copyright owner:
  - 11.2.1 to enter or upload that Content;
  - 11.2.2 to receive the net proceeds of such sales as arise;

## **12. How we handle your Content**

- 12.1 If you Post Content to any public area of Our Website it becomes available in the public domain. We have no control who sees it or what anyone does with it.
- 12.2 You irrevocably authorise us to publish feedback, comments and ratings about your Products, services and activity through Our Website, even though it may be defamatory or critical.



- 12.3 We will use that licence only for commercial purposes of the business of Our Website and will stop using it after a commercially reasonable period of time.
- 12.4 Posting content of any sort does not change your ownership of the copyright in it. We have no claim over it and we will not protect your rights for you.
- 12.5 You understand that you are personally responsible for your breach of someone else's intellectual property rights, defamation, or any law, which may occur as a result of any Content having been Posted by you;
- 12.6 You accept all risk and responsibility for determining whether any Content is in the public domain and not confidential.
- 12.7 Please notify us of any security breach or unauthorised use of your account.

### **13. Restrictions on what you may Post to Our Website**

We invite you to Post Content to Our Website for marketing your products and services and in other ways. We have to regulate your use of Our Website to protect our business and our staff, to protect other users of Our Website and to comply with the law.

We do not undertake to moderate or check any item Posted.

You agree that you will not use or allow anyone else to use Our Website to Post Content or undertake any activity which is or may:

- 13.1 be unlawful, or tend to incite another person to commit a crime;
- 13.2 be obscene, offensive, threatening, violent, malicious or defamatory;
- 13.3 be sexually explicit or pornographic;
- 13.4 be likely to deceive any person or be used to impersonate any person, or to misrepresent your identity, age or affiliation with any person;
- 13.5 use a Posting to solicit responses unconnected with the purpose of Our Website or the terms proposed by this agreement.

### **14. Your Posting: restricted content**

In connection with the restrictions set out below, we may refuse or edit or remove a Posting which does not comply with these terms.

In addition to the restrictions set out above, a Posting must not contain:

- 14.1 hyperlinks, other than those specifically authorised by us, as explained on Our Website;
- 14.2 keywords or words repeated, which are irrelevant to the Content Posted.
- 14.3 the name, logo or trademark of any organisation other than yours or organisations you are authorised to use.
- 14.4 inaccurate, false, or misleading information.

## **15. Security of Our Website**

If you violate Our Website we shall take legal action against you.

You now agree that you will not, and will not allow any other person to:

- 15.1 modify, copy, or cause damage or unintended effect to any portion of Our Website, or any software used within it.
- 15.2 link to our site in any way that would cause the appearance or presentation of the site to be different from what would be seen by a user who accessed the site by typing the URL into a standard browser;
- 15.3 download any part of Our Website, without our express written consent;
- 15.4 collect or use any product listings, descriptions, or prices;
- 15.5 collect or use any information obtained from or about Our Website or the Content except as intended by this agreement;
- 15.6 aggregate, copy or duplicate in any manner any of the Content or information available from Our Website, other than as permitted by this agreement or as is reasonably necessary for your use of the Services;
- 15.7 share with a third party any login credentials to Our Website, without our express written consent.

## **16. Copyright and other intellectual property rights**

- 16.1 All content on Our Website, is the property of either us or our affiliates or suppliers of products for sale. It is all protected by international copyright laws.
- 16.2 You may not copy, modify, publish, transmit, create derivative works from, or in any way exploit any of the content, except as is expressly permitted in this agreement or with our written consent.
- 16.3 For the sake of good order you should note that copyright exists in compilations and graphic images, shapes and styles, as well as in raw text.

## **17. Interruption to the Service**

- 17.1 We give no warranty that the Service will be satisfactory to you.
- 17.2 We will do all we can to maintain access to Our Website, but it may be necessary for us to suspend all or part of our Service for repairs, maintenance or other good reasons. We may do so without telling you first.
- 17.3 You acknowledge that our Service may also be interrupted for reasons beyond our control.
- 17.4 You agree that we are not liable to you for any loss whether foreseeable or not, arising as a result of interruption to our Service.

## **18. Our disclaimers**

- 18.1 We are not responsible for any business loss (including loss of profits, revenue, contracts, anticipated savings, data, goodwill or wasted expenditure) or any other indirect or consequential loss whatever.
- 18.2 We are not liable in any circumstances for damages resulting from loss of use, loss of data or loss of revenues or profits, whether in an action of contract, negligence or otherwise, arising out of or in connection with your use of Our Website.
- 18.3 Our Website and Services are provided "as is". As to Our Website and Services, we make no representation or warranty of any kind, express or implied, including, without limitations, warranties:
  - 18.3.1 as to fitness of Our Website and Service for a particular purpose;

18.3.2 as to availability and accessibility, without interruption, or without error;

18.3.3 any obligation, liability, or remedy in tort whether or not arising from our negligence.

18.4 You now expressly release us from any and all claims and liability known and unknown, arising in any way from a dispute between you and a buyer.

## **19. Your indemnity to us**

You agree to indemnify us against all loss and expense, including legal fees and management time related in any way to:

19.1 a claim by any person in respect of any Product;

19.2 protecting the reputation of our business by our making a payment to a customer of yours in circumstances where you have failed to make that repayment or otherwise comply with your contract with that customer.

19.3 any cost to us arising from a decision by us to comply as your agent, with any obligation of yours, whether or not we have your permission, arising out of any regulation or law, including:

19.3.1 the deletion or amendment of any text or other content you have placed on Our Website;

19.3.2 any payment we make on an ex gratia basis, arising from a contract between you and a buyer;

19.4 legal or other fees we incur in defending a claim or the imposition of a fine or penalty;

19.5 our management time in dealing with any failure or alleged failure by you to comply with any relevant regulation or law.

## **20. Miscellaneous matters**

20.1 You undertake to provide to us your current land address, e-mail address, telephone number as often as they are changed together with all information that we may require to enable us to fulfil our obligations under this contract.

20.2 So far as any time, date or period is mentioned in this agreement, time shall be of the essence.

- 20.3 If any term or provision of this agreement is at any time held by any jurisdiction to be void, invalid or unenforceable, then it shall be treated as changed or reduced, only to the extent minimally necessary to bring it within the laws of that jurisdiction and to prevent it from being void and it shall be binding in that changed or reduced form. Subject to that, each provision shall be interpreted as severable and shall not in any way affect any other of these terms.
- 20.4 FSSA (PTY) Ltd respects your privacy, takes reasonable steps to protect your personal information as defined in the Promotion of Access to Information Act 2000 and Protection of Personal Information Act 2013. Our compliance with the legislation is set out in Privacy Policy.
- 20.5 If you are in breach of any term of this agreement, we may:
- 20.5.1 publish all text and Content relating to the claimed breach, including your name and email address and all correspondence between us and our respective advisers; and you now irrevocably give your consent to such publication.
- 20.5.2 terminate your account and refuse access to Our Website;
- 20.5.3 remove or edit Content, or cancel any order at our discretion.
- 20.6 Any obligation in this agreement intended to continue to have effect after termination or completion shall so continue.
- 20.7 No failure or delay by any party to exercise any right, power or remedy will operate as a waiver of it nor indicate any intention to reduce that or any other right in the future.
- 20.8 You agree that all our electronic communications satisfy any legal requirement that such communications be in writing.
- 20.9 Any communication to be served on either of us by the other shall be delivered by hand or sent by first class post or recorded delivery or by e-mail.

It shall be deemed to have been delivered:

if delivered by hand: on the day of delivery;

if sent by post to the correct address: within 72 hours of posting;

If sent by e-mail to the address from which the receiving party has last sent e-mail: within 24 hours if no notice of non-receipt has been received by the sender.

- 20.10 In the event of a dispute between us, then, if we so ask, you undertake to attempt to settle the dispute by engaging in good faith with us in a process of mediation before commencing arbitration or litigation.
- 20.11 This agreement does not give any right to any third party.
- 20.12 We shall not be liable for any failure or delay in our performance of this agreement which is caused by circumstances beyond our reasonable control, including any labour dispute.
- 20.13 In the event of any conflict between any term of this agreement and the provisions of the memorandum of incorporation of a limited company or any comparable document intended to regulate any other corporate or collective body, then the terms of this agreement shall prevail.
- 20.14 This agreement shall not be governed by the United Nations Convention on Contracts for the International Sale of Goods, the application of which is hereby expressly excluded.
- 20.15 The validity, construction and performance of this agreement shall be governed by the laws of the Republic of South Africa.