

# TERMS & CONDITIONS



## 1. Interpretation

These Terms and Conditions may contain several terms and phrases, which have a specific meaning in this document. Any reference to a party shall, if such party is liquidated or sequestered, also apply to and be binding upon that party's liquidator or trustee. Unless we show to the contrary in these Terms and Conditions, references to gender include the other genders, the singular includes the plural and the other way around.

## 2. Definitions

The following expressions shall bear the meanings assigned to them below:

**"3<sup>rd</sup> Party Websites"** means websites other than the FUDGEEZ site

**"Access"** when used in a website (whether it be the site or a 3<sup>rd</sup> Party Website), means to visit, use, load in a web browser, mobile phone, or similar software application or device, or otherwise engage with a website

**"Branded Sites"** means FUDGEEZ branded site, which includes branded accounts, pages, and websites hosted by or on the social networks

**"Content"** means all information (such as data files, written text, computer software, music, audio files or other sounds, photographic images, videos or other images), which You may have access to as part of, or through the use of, the site

**"The ECT Act"** means the Electronic Communications and Transactions Act 25 of 2022

**"Facebook"** means Facebook Inc., as well as the social network located at <http://facebook.com>, as the context dictates

**"Intellectual Property"** means, collectively, the patents, copyrights (and moral rights), trademarks, designs, models, brands, names, trade names, graphic icons, hyperlinks, know-how, trade secrets, and any other type of intellectual property (whether registered or unregistered, including applications for and rights to get or use same) which We own, licence, use and/or hold

**"FUDGEEZ App"** means the software application owned by FUDGEEZ, which allows users to order FUDGEEZ products and/or services via the application

**"Know-how"** means all the ideas, designs, documents, diagrams, information, devices, technical data, secrets, and other processes and methods We use in connection with the site, as well as all available information regarding marketing and promotion of the goods and services described in these Terms and Conditions, as well as all and any modifications or improvements to any of them

**"Online Apps"** means the FUDGEEZ App and/or FUDGEEZ website or both where applicable

**"POPI ACT"** means the Protection of Personal Information Act 4 of 2013

**"Post"** means to upload, publish, transmit, share or store

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**“Promotion and Competition Rules”** means the individual terms and conditions applicable to and governing all FUDGEEZ promotions and competitions, which are available on this Website

**“Properties”** means properties or consent on which we show advertisements

**“Remarketing Lists”** means a list of user cookies created or otherwise obtained by You and used for remarketing or similar audiences

**“RICA Act”** means the Regulation of Interception of Communications and Provision of Communication Related Information Act 70 of 2022

**“Similar Audiences Lists”** means a list of users created by Google based on a remarketing list for connection with similar audiences

**“Social Networks’ Terms of Use”** means the terms and conditions governing the social networks’ services and/or platforms from time to time

**“The Site”** means this website, online apps and the branded site (“Site” is a reference to any of the sites, as the context permits or shows)

**“Terms and Conditions”** means these Terms and Conditions of use, as amended from time to time

**“Trademarks”** means those trademarks we own (or which We are designated as the beneficial owner of) and any other trademarks, designs, logos, style names, tag lines, and slogans, which We own or have the right to use or any derivative service offerings of, and applications for, any of same

**“This Website”** means FUDGEEZ website at <https://www.fudgeez.co.za>

**“Us”, “We”, “Our” and “FUDGEEZ”** means FUDGEEZ, a brand owned by FUDGEEZ HOLDINGS (PTY) Ltd, a company with limited liability incorporated following the company laws of the Republic of South Africa (registration number 2015/434719/07) and the licensee for the FUDGEEZ Trademark, FUDGEEZ system and system property in South Africa

**“User/s”** means anyone who accesses the sites within the meaning of the term “Access” above

**“Unique user”** means a unique instance of a browser, application, or similar technology

**“User Cookie”** means the user identifier (of which a cookie is one example) associated with a User for remarketing or similar audiences

**“WhatsApp”** means WhatsApp LLC., as well as the social network and messaging platform tools accessible through WhatsApp.com

**“You”** means visitors to the sites

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## 3. General

### 3.1 Good and Delivery of Goods (Online ordering via the Website or Online App)

The goods (“Goods”) offered by FUDGEEZ for delivery and/or collection are indicated on the “Online Order Menu” section of this website or the online app, as updated from time to time.

The photos used on the site are for illustration purposes only. Actual goods may vary. The number of goods the User may order on the site for delivery and/or collection may be restricted. This will be indicated on the website or the online apps.

The prices of the goods are indicated on the sites, as updated from time to time and will vary depending on the type, quantity, and/or size of the goods ordered, as well as any variations, amendments, or upgrades made thereto. Prices may also vary depending on the FUDGEEZ outlet that the goods are ordered from and whether the goods have been ordered via a third-party service provider for delivery or collection.

The User can view and order the goods for delivery or collection via the website or online app. Goods and services offered through this website or online apps are strictly on an “as is” basis as reflected.

The delivery and/or collection of goods are subject to the following:

If delivery and/or collection is not available at a FUDGEEZ outlet, this will be indicated on the website or online apps. If delivery is available at a FUDGEEZ outlet, we may limit the delivery to specific times and areas within the day.

The FUDGEEZ outlet from which the goods may be collected will be the FUDGEEZ outlet selected for collection by the User on the website or online app. The User must present a copy of the invoice generated by the website or online apps for the purchase of the goods or a copy of the communication SMS sent to the User by FUDGEEZ.

- The FUDGEEZ outlet from which the delivery of the goods will be made (if applicable), will be selected automatically by the website or online app upon insertion of the User’s physical delivery address. The allocation of a FUDGEEZ outlet is based on the delivery area (“Delivery Area”). The Delivery Area for each FUDGEEZ outlet may vary from time to time. If no FUDGEEZ outlet is allocated by this website or online app, then the User’s physical address is deemed to not be included in the Delivery Area for any FUDGEEZ Outlet or delivery is not available for the FUDGEEZ outlet. Notwithstanding the above, FUDGEEZ reserves the right, in its sole and absolute discretion, to elect not to deliver goods to any area.
- A delivery fee and/or communication may be payable by the User to FUDGEEZ and/or the third-party service provider for utilising the delivery service.

### 3.2 Orders

- **Placing orders.** Once you have created your order from the menu, you can submit your order by clicking on the “Continue to Checkout”, or similar button. You must check the information that you

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enter and correct any errors before clicking on this button because once you click on this, input errors cannot be corrected. We are not responsible for your errors.

- **Change of mind.** If at any time before you click on the “Continue to Checkout”, or similar button, you decide that you do not wish to proceed with your order, you should clear your order basket and then close the application or website window.
- **Receipt and acceptance.** On receipt of your order, we will begin processing your order and will send you a notification via an in-application or website notification, SMS, or email when your order has been received by the FUDGEEZ outlet and whether it has been accepted for preparation by the outlet.
- **Payments.** Where any payment you make is not authorised or approved, you will be returned to the previous page on the application or website and we will not be obliged to provide the services.
- **Currency.** All transactions will be processed in South African Rands (ZAR)
- **Cancellation.** Once you have placed your order and your payment has been authorised, you will not be able to cancel your order or be entitled to a refund

## 3.3 Price and Payment

- **Price quoted.** Prices will be quoted on this application or website. These prices include VAT, but may exclude delivery, service, preparation, order size, and similar costs, which will be added to the total amount due (if you opt for delivery instead of collection), where applicable.
- **Possible errors.** The application or website contains numerous menus and some of the menus may be incorrectly priced. If the correct price for an order differs from the price stated on the application or website, the FUDGEEZ outlet will normally contact you before the order in question is dispatched. We are under no obligation to ensure that the order is provided to you at the correct price or to compensate you for incorrect or no pricing.
- **Complaints.** Where applicable, all delivery orders will be performed by the respective FUDGEEZ outlet directly or 3<sup>rd</sup> party. If you have a complaint about the service provided by the FUDGEEZ outlet, then complaints must be lodged, initially with the outlet. If you have paid for your food and delivery online, our customer care team will, subject to your compliance with these general terms, assist with the complaint procedures, including the processing of EFT refunds and chargebacks where appropriate.
- **Payment methods.** Payments for all orders must be by credit or debit card or EFT or as stated on this application or website, alternatively, in cash at the point of collection or delivery to you.
- **Discounts.** A discount may apply to your order if you use a promotional code recognised by this app or website and endorsed by us.
- **Delays in payments.** Please note that from time to time there may be delays with processing online payments and transactions; on occasion, this may result in payments taking up to 60 days to be deducted from your bank account or charged to your credit card.

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## 3.4 Payments and Refunds

- **Payments.** We are committed to providing secure online payment facilities facilitated by a 3<sup>rd</sup> party partner Peach Payments. All transactions are encrypted using appropriate encryption technology. Payment may be made for goods via the following methods (depending on its availability and/or your eligibility to use such a method)
  - **Debit Card:** Where payment is made by debit card, we may require additional information to authorise and/or verify the validity of payment. In such cases, we are entitled to withhold delivery until the additional information is received by us and authorisation is obtained by us for the amounts. If we do not receive authorisation your order for the goods will be cancelled. You warrant that you are fully authorised to use the debit card supplied for purposes of paying for the goods. You also warrant that your debit card has sufficient available funds to cover all the costs incurred as a result of the services used on the website or online app.
  - **Credit Card:** Where payment is made by credit card, we may require additional information to authorise and/or verify the validity of payment. In such cases, we are entitled to withhold delivery until the additional information is received by us and authorisation is obtained by us for the amounts. If we do not receive authorisation your order for the goods will be cancelled. You warrant that you are fully authorised to use the credit card supplied for purposes of paying for the goods. You also warrant that your credit card has sufficient available funds to cover all the costs incurred as a result of the services used on the website or online app.
- **Refunds.** Refunds will be processed by our designated customer care representative. Where a customer provides FUDGEEZ with the incorrect account information, and a refund is successfully processed to the provided details, FUDGEEZ will not be held responsible for any further refunds. Card reversals will not be entertained, as the reversal may take up to 14 business days to reflect. All refunds will be made into the bank account information provided to our customer care representative. A valid proof of refund by FUDGEEZ into the nominated bank account shall be conclusive proof that the refund has been processed. Should a refund not reflect, the customer will have to approach their banking institution to investigate the matter.
- **Errors.** We shall take all reasonable efforts to accurately reflect the description, availability, purchase price, and delivery charges of goods on the website and online apps. However, should there be any errors of whatsoever nature on the website or online app (which are not due to our gross negligence), we shall not be liable for any loss, claim, or expense relating to a transaction based on any error, save – in the case of any incorrect purchase price – to the extent of refunding you for any amount already paid. FUDGEEZ shall not be bound by any incorrect information regarding our goods displayed on any third-party websites.

## 4. Deals, Promotions and Other Discounted Goods

From time to time, we may offer certain Goods at discounted prices as part of a deal or FUDGEEZ App only deal (the “Deal”). These will be subject to certain conditions as set out on the Site. If you purchase a product within the scope of a Deal, you will pay the discounted price for that product. However, if you buy a product in a manner that falls outside of the scope of a Deal, then you will pay the then-current selling price on the Sites for each product that falls outside the scope of the Deal.

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## 5. Legal age and capacity

You may not access the sites and may not accept these Terms and Conditions if you lack the legal capacity to enter into a binding contract with us; are a person barred from accessing the sites under the laws of the Republic of South Africa or other countries, including the country in which You are resident or from which You access the site. By accessing the site and/or the content, You represent and warrant that You are of full legal age or are emancipated or have your parent/guardian's consent to enter into a contract, being these Terms and Conditions.

We may change aspects of the sites. You agree that we may add new features and modify or even discontinue existing features without notice to You and at our sole discretion. You are free to stop accessing the sites at any time without notifying Us.

The content accessible through the site may not be appropriate for all users and while We take steps to monitor and remove objectionable content, it remains solely your responsibility not to consume inappropriate content or to prevent underage users from accessing this content where it is within your control to do so.

The site will contain content that we, You and other Users create. Some of this content will be directed to or appear on 3rd Party Websites (which may include social networks). Your use of those 3rd Party Websites is subject to both these Terms and Conditions and the Terms and Conditions applicable to those 3rd Party Websites (which may include the Social Networks' Terms of use, and in this regard, the Social Networks' Terms of use shall be incorporated herein. You agree that it remains Your obligation to familiarise yourself with the 3rd Party Websites Terms and Conditions (including, where appropriate, the providers' terms) and to comply with both them and these Terms and Conditions. In the event there is a conflict between these Terms and Conditions and a 3rd Party Websites terms of use (including, where appropriate, the Social Network's Terms of Use), these Terms and Conditions shall prevail for your access to the sites.

All annexures, addenda and amendments to these Terms and Conditions form an integral part of these Terms and Conditions and, therefore, our contract with You.

## 6. The Sites and Registration

We operate the sites as an extension of our information, education and marketing initiatives. Information about the Sites may be found on the site concerned. You may be required to register on the Sites if You wish to access the sites. Registration is achieved using a registration form available on the Sites (where you register with the social networks to access the branded sites You grant permission to the social networks to pass certain of your information to Us to enable You to Access the Sites). Registration with the social networks is subject to the Social Networks' Terms of Use.

When You register on the sites You may be asked to select a username and password which You will use to secure your account. Once registered You will be able to log into your account using your username and your password or your relevant account information with your preferred authentication service. To complete the registration process, You may be required to submit information about yourself and your preferences to Us ("Registration Data"). The use of your Registration Data is dealt with in our Privacy Policy below, which, for the avoidance of doubt, forms part of these Terms and Conditions.

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You warrant that the Registration Data is accurate, current and complete (this includes Registration Data we may receive from the providers.) You will be denied access to the Sites should You breach this warranty or subsequently be found to have breached this warranty.

We may take steps to verify your Registration Data once You have completed the requisite registration process using a verification email sent to your given email address. You agree to this verification process and irrevocably consent to Us gaining Access to relevant information held by 3<sup>rd</sup> parties (including, but not limited to the Social Networks) which may be required to reasonably complete the verification process. You acknowledge and agree that access to the Sites may be limited until the verification process has been completed.

Should You not agree to the verification process as contemplated above or withhold your consent, your Access to the Sites, generally, may be suspended or terminated and You waive any claims You may have against Us, FUDGEEZ Associates, Our officers, directors, employees, servants, agents and/or contractors arising out of Our denial of access to You to the Sites.

You agree that the security of your account is solely your responsibility. You further agree that:

- You are responsible for maintaining and promptly updating the Registration Data and any other information You provide Us with, thereby keeping it accurate, current and complete.
- If You believe the security of your registration on the sites has been compromised in any way, You will notify us (in the case of This Website) or the relevant provider immediately.
- You shall be held fully responsible for any misuse or compromise to your account which We are not properly notified about.
- If any security violations are believed to have occurred in association with your account, we reserve the right to suspend access to your account pending an investigation and resolution.

The User warrants that all orders for goods placed with the Users account are made by the user or with the Users express consent and that the user will be responsible for the payment of any orders for Goods in respect of the Users' account.

## 7. Users' code of conduct

You may not access the content or the sites for or in conjunction with any illegal, unlawful, or immoral purpose or for purposes prohibited by these Terms and Conditions.

You may not frame the sites in any way whatsoever except as permitted by the site's functionality (details may be found on the sites concerned) or otherwise without our prior written permission. Recognising the global nature of the Internet, You agree to comply with all local laws, rules, and regulations regarding your conduct on the sites, as well as the providers' terms.

You agree to adhere to generally acceptable Internet and email etiquette. In this regard, without being limited to the examples listed below, You agree not to:

- Engage in any abuse of email or spamming, including, without being limited to – the posting or cross-posting of unsolicited content with the same or substantially the same message to recipients that did not request to receive such messages; and inviting people who You may be connected to using 3<sup>rd</sup> party services (including, but not limited to the social networks) to



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access the sites where those people may not wish to receive such invitations or similar communications (in other words, make sure your contracts on other services are receptive to receiving invitations to joining Us and accessing the sites or other communications You send them from Us)

- Engage in any activity intended to entice, solicit or otherwise recruit website users to join an organisation except where We expressly authorise such activities in writing
- Take any action aimed at deceiving or misleading any person, attempt to impersonate or misrepresent your affiliation to any person or forge headers or otherwise manipulate identifiers to disguise the origin of anything Posted through the sites.
- Use the sites to post anything defamatory, discriminatory, obscene, offensive, threatening, abusive, harassing, harmful, hateful or which carries child pornography, religious or racial slurs, or threatens or encourages bodily harm or the like or which may violate any person's personality rights.
- Use the sites to make fraudulent offers to sell or buy products, items or services or to offer or solicit for any type of scam such as "pyramid schemes" and "chain letters"
- Use the sites in any manner which could damage, impair, overburden or disable the sites or interfere with any other party's access to the sites.
- Use the sites to post anything which contains viruses or any other destructive features, regardless of whether or not damage is intended.
- Gather email addresses and/or names for commercial, political, charity or like purposes or use the service to collect or attempt to collect personal information about third parties without their knowledge or consent.
- Violate the privacy of any person or attempt to gain unauthorised access to the sites or any other network, including (without being limited to) through hacking, password mining, or any other means
- Otherwise use the sites to engage in any illegal or unlawful activity

Should You engage in any one or more of the above practices, which shall be determined by our sole discretion (and which decision shall be final), then We shall be entitled, without prejudice to any other rights we may have, to:

- Without notice, suspend, or terminate your access to the sites to the extent your access to the sites is within our control
- Hold You liable for any costs or damages we incur as a result of your misconduct
- Notwithstanding our Privacy Policy referred to below, disclose any information relating to You, whether public or personal, to all persons affected by your actions

We may conduct promotions and competitions from time to time on one or more of the sites or in one or more of the FUDGEEZ outlets. Each promotion and competition will have its specific terms and conditions which apply to and govern them. These promotions and competition rules will be available on the website.



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## 8. Licences

**Our Licence to You.** We grant You a personal, revocable, worldwide, royalty-free, non-commercial, non-transferable and non-exclusive licence to access the content on the sites. This licence is for the sole purpose of enabling You to access the sites, in the manner permitted by these Terms and Conditions. In the event We revoke this licence, You may no longer access the sites or the content on the sites.

You may not (and You may not permit anyone else to) copy, modify, create an adaption of, reverse engineer, decompile, or otherwise attempt to extract the source code of the Sites or any part thereof, unless this is expressly permitted or required by law, or unless We have specifically to You that You may do so, in writing.

Unless We have given You specific written permission to do so, You may not transfer, through an assignment of rights, sublicense or otherwise, your rights to use the Sites or otherwise transfer any part of your rights to use the Sites.

To the extent that any copying, reproduction, distribution, transmission, display, broadcasting or publishing of any content is expressly permitted (such permission to be interpreted in its most restrictive sense) You may do so, provided that all trademarks, trade names and all copyright, ownership, proprietary, and confidentiality notices as are included on the original content are retained and displayed without alteration or modification and not in any manner obscured or removed.

You acknowledge that You do not acquire any ownership rights of use in or to any content by copying, reproducing, distributing, transmitting, displaying, broadcasting or publishing that Content except where explicitly permitted to do so.

Caching (generally being storage of information/data for later use or access) of the sites shall only be permitted if:

- The purpose of caching is to make the onward transmission of the content from the sites more efficient
- The cached content is not modified in any manner whatsoever
- The cached content is updated every 12 (twelve) hours
- The cached content is removed or updated when We so require

**Your Licence to Us.** We do not claim ownership rights in the content that You post to the sites. You retain any rights that You may already have in your content when You post your content to or otherwise access the sites, subject to the limited licence You grant to Us.

By posting any content on or through the sites, You grant Us an irrevocable, non-exclusive, commercial, fully-paid, royalty-free, transferrable, and worldwide licence to moderate, use, modify, delete from, add to, publicly perform, publicly display, reproduce, commercialise or otherwise distribute such content on or through the sites including without limitation, distributing part or all of the sites or content in any media formats and through any media, partners or affiliate channels and make use of the content in our advertising campaigns.

The licence You grant to us means that:

- You are free to licence your Content to anyone else in addition to Us
- We may make commercial use of your content or otherwise commercialise your content;

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- We are not required to pay You for the use of the content You post to the Sites
- We can use our affiliates, subcontractors and other partners (such as Internet content delivery networks and wireless carriers) to grant access to the sites
- The licence extends to anywhere in the world because of the global nature of the Internet and the fact that our users can access the content from anywhere in the world.

**General issues You should be aware of.** Because You can only lawfully licence content You have certain rights in, You represent and warrant that:

- You own the content You posted on or through the sites or otherwise have the right to grant the licence outlined in this section
- Posting your content on or through the sites does not violate the privacy rights, publicity rights, copyright, contractual rights, or any other rights of any person or entity
- You also agree to pay for all royalties, fees, and any other monies owing to any person or entity because of any content You post on our through the sites.

## 9. ECT act

**Our Licence to You.** Access to the Content on or through this website and this website itself are classified as “electronic transactions” in terms of the ECT Act and therefore You have the rights detailed in Chapter VII of the ECT Act and We must disclose the following information:

**Our full name:** FUDGEEZ HOLDINGS (PTY) Ltd

**Registration number:** 2015/434719/07

**Street Address:** 3 Golf Road, Peacehaven, Vereeniging, Gauteng, 1939

**Postal Address:** PO BOX 265093, Three Rivers, Vereeniging, Gauteng, 1935

**Physical address for receipt of legal service:** 3 Golf Road, Peacehaven, Vereeniging, Gauteng, 1939

**Attention:** Daniel, Johannes Nel or Deidre Nel

**Main Business:** Fudgeez Branded Bakery Vetkoek foodservice outlets

**Website address:** [www.fudgeez.co.za](http://www.fudgeez.co.za)

**Official email address:** [enquiries@fudgeez.co.za](mailto:enquiries@fudgeez.co.za)

**Governing Terms and Conditions:** These Terms and Conditions

**Manual in terms of the Promotion of Access to Information Act 2 of 2000:** Refer to the Access to Information Policy on the Website

**Directors:** Daniel, Johannes Nel and Deidre Nel

**Costs associated with the Access to and use of this Website:** There are no costs associated with the Access to this Website

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**Dispute Resolution:** See clause above

**Cooling off period:** The cooling off rights under section 44 of the ECT Act does not apply in terms of section 42 (C) of the ECT Act insofar as the electronic transactions applied to the supply of foodstuffs, beverages and other goods intended for everyday consumption supplied to the home, residence or workplace of the consumer/

## 10. Liabilities

**Disclaimers And Limitation Of Liability.** (“We” and ”Us” in the context of this disclaimer and limitations of liability include FUDGEEZ, their affiliated companies and subsidiaries). Your use of and reliance on the sites is entirely at your own risk. The sites are provided “as is”.

Although we take steps to verify the information presented on or through the sites, we do not represent or endorse the accuracy or reliability of any advice, opinion, statement or other information contained in, displayed on, linked to or distributed through the sites or the content other users may publish to the sites. You acknowledge that any reliance upon any such opinion, advice, to correct any error or omissions on the sites without notice to you. Information, ideas and opinions expressed on or through the sites should not be regarded as professional advice or our official opinion and you are strongly advised to seek professional advice before acting on such information.

The the fullest extent permissible by applicable law, we disclaim all warranties of any kind, whether express or implied, including without limitation to the implied warranties that the content published to the sites (or the sites themselves, for that matter) is fit for any purpose other than as a reference work in respect of the content provided on the sites. Whilst we take reasonable precautions in our operation of the sites, you agree that neither we nor FUDGEEZ associates shall be liable in respect of any loss, damage or damages however arising and whatever the cause, in particular, according to and in furtherance of these terms and condition, your access to the sites or from your inability to access the sites. We will use reasonable endeavours to make the sites available to you and always keep the sites available to you. However, you agree that we shall not be liable in respect of any loss or damage caused by or arising from the unavailability of, any interruption in or your access to the sites (either in part or as a whole) for any reason whatsoever. If we are found to be liable, our liability to the user or any third party in any circumstances is limited collectively to R 1 000.00 (one thousand rands).

## 11. Rights infringement

If you are of the view that your rights have been infringed through the unlawful use of the sites by registrants or 3<sup>rd</sup> parties, You may address a complaint to us which satisfies the following requirements and/or contains the following information:

- The full names and address of the complainant
- The written or electronic signature of the complainant
- Identification of the right that has allegedly been infringed
- Identification of the material or activity that is claimed to be the subject of unlawful activity
- The remedial action required to be taken by the service provider in respect of the complaint
- Telephonic and electronic contact details, if any, of the complainant
- A statement that the complainant is acting in good faith

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- A statement by the complainant that the information in the takedown notification is to his or her knowledge true and correct

Please either contact Us on the sites or address your communications to:

**Email Address:** [enquiries@fudgeez.co.za](mailto:enquiries@fudgeez.co.za)

**Customer Care Line:** (+27) (0) 76 688 2602

We will investigate the complaint on receipt of a complete and properly formulated complaint notice and will take appropriate action where necessary. Such action may include, but is not limited to, removing the offending content from the sites and/or suspension or termination of the offending registrant or third party. We reserve Our rights to take further action should any offensive language or defamatory comments be directed to FUDGEEZ or the FUDGEEZ Associates or the brand in general.

Links to and from the sites and to other websites belonging to or operated by 3<sup>rd</sup> parties ("linked websites") do not constitute our endorsement of such linked websites or their contents nor do we necessarily associate ourselves with their owners or operators. You are solely responsible for identifying and familiarising yourself with any Terms and Conditions, which will govern your relationship with such a 3<sup>rd</sup> party.

We have no control over linked websites and you agree that we are not responsible or liable for any content, information, goods or services available on or through any such linked websites or for any damage, damages or any other loss caused or alleged to be caused by or in connection with your use of or reliance on any such content, information, goods or service available on or through any such linked websites. You agree that where you access linked websites, you do so entirely at your own risk.

Your interaction, correspondence or business dealings with 3<sup>rd</sup> parties which are referred to or linked from or to the sites are similarly entirely at your own risk and are solely between you and such 3<sup>rd</sup> party including the acquisition, disposal, payment and delivery of any goods or services, and any terms, conditions, warranties or representations associated with such interaction, correspondence or business dealing.

## 12. Arbitration

If any dispute arises between us regarding any provision of these Terms and Conditions, or its application or termination, then We agree that We will attempt to resolve our dispute informally through cooperation or discussion between the parties directly involved in the dispute within 5 days after that dispute arises or such extended period as We may agree to with You.

If We are unable to informally resolve our dispute, that dispute shall be finally resolved following the Rules of the Arbitration Foundation of Southern Africa by an arbitrator appointed by the Foundation. Arbitration proceedings shall take place in Johannesburg.

To the maximum extent, permissible by applicable law: (i) This clause shall constitute your irrevocable consent to the arbitration proceedings, and You shall not be entitled to withdraw your consent or to claim that You are not bound by this clause. We may, at Our discretion, waive this clause and permit

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Our dispute to be resolved using an alternate dispute resolution process; (ii) Any award that may be made by the arbitrator:

- Shall be final and binding
- Will be carried into effect
- May be made an order of any court to whose jurisdiction the parties to the dispute are subject
- Notwithstanding the foregoing, nothing in this clause shall be construed as precluding either party from applying to the court for a temporary interdict or other relief of an urgent nature, pending the decision of the award of the arbitrator in terms of this clause

This clause is severable from the rest of this agreement and shall therefore remain of full force and effect even in this agreement is terminated or cancelled for any reason at any time.

## 13. Governing law and jurisdiction

This Website is controlled and maintained in the Gauteng province of the Republic of South Africa. You irrevocably agree that the law of the Republic of South Africa shall govern This Website and these Terms and Conditions. You consent to the jurisdiction of the High Court of the Republic of South Africa, Gauteng Provincial Division held at Johannesburg, South Africa in respect of disputes which may arise out of your Access to This Website and these Terms and Conditions. To the maximum extent permitted by applicable law, You also irrevocably and undocintionally consent to the jurisdiction of the Magistrates Court (if We exercise proceedings in such Court) even though the value of a claim which We may have against You may exceed the ordinary monetary jurisdiction of the Magistrates Court.

## 14. Severability

Any provision in these Terms and Conditions which is or may become illegal, invalid or unenforceable shall be ineffective to the extent of such prohibition or unenforceability and shall be treated as if it were not written and severed from these Terms and Conditions, without invalidating the remaining provisions of these Terms and Conditions.

## 15. Termination

If You breach any of these Terms and Conditions, We may immediately, automatically and without notice to You, terminate your access to the Sites, and/or prohibit your future access to the Sites, and/or take appropriate legal action against You (including without limitation, applying for urgent and/or interim relief or claiming damages), without incurring any liability to You of any nature whatsoever and howsoever arising, and all of Our rights in this regard are expressly reserved.

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## 16. General Terms

You are bound by these Terms and Conditions.

This agreement shall be deemed to have been concluded in Vereeniging at the time You access the Sites for the first time

Data messages addressed by You to Us shall be deemed to have been:

- Received if and when responded to
- Sent by You within the geographical boundaries of the Republic of South Africa

Data messages addressed by Us to You shall be deemed to have been:

- Received data messages as detailed in section 23(b) of the ECT Act
- Electronic signatures, encryption and/or authentication are not required for valid electronic communication between You and Us.
- As well as warrant that data messages that You send to Us from a computer, IP address or mobile device normally used by You, were sent and/or authorised by You personally

These Terms and Conditions constitute the whole agreement between You and Us relating to your Access to and use of the Sites. No indulgence, extension of time, waiver or relaxation of any of the provisions or terms of these Terms and Conditions which We may show, grant or allow You shall operate as an estoppel against us in respect of its rights under these Terms and Conditions or shall it constitute a waiver by Us of any of our rights and We shall not thereby be prejudiced or stopped from exercising any of its rights against You which may have arise in the past or which might arise in the future. Nothing in this agreement shall create any relationship of agency, partnership, or joint venture between You and FUDGEEZ and You shall not hold itself out as the agent or partner of FUDGEEZ or as being in a joint venture with FUDGEEZ.

## 17. Remarketing

Fudgeez.co.za uses all features of Analytics for "Display Advertisers" this allows us to collect certain information and to provide visitors (You) with tailored information upon each visit. This includes obtaining specific cookie data, such as the source, medium and keyword used to visit this Website. Google Analytics however does not store any visitor specific data and We will not use visitor specific data in any way related to Analytics, Google Adwords, and Remarketing. Cookies are a common part of many commercial websites that allow small text files to be sent by a website, accepted by the web browser and then placed on your hard drive as recognition for repeat visits to the site. Every time You visit this Website, Our servers, through cookies, pixels and/or GIF files, collect basic technical information as described.

You do not need to enable cookies to visit this Website; however, some parts of this Website and some services may be more difficult or impossible to use if cookies are disabled. The web servers may also automatically identify your device by identifiers like IP or MAC addresses. We may use this information for a variety of business purposes, including analysing trends, administering this Website, tracking user's and Unique Users' movements and gathering broad demographic information for aggregate use.

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Fudgeez.co.za uses remarketing with AdWords and Analytics to display content specific advertisements to visitors that have previously visited this Website when those visitors go to other websites that have the Display Network implemented.

Fudgeez.co.za and other 3<sup>rd</sup> party vendors, including Google use first-party cookies (such as the Google Analytics cookie) and third-party cookies together to inform, optimise, and serve ads based on visitor's past visits to Our Website.

We take our Users' privacy very seriously. We feel that certain personal information should always be kept private, so We have developed restrictions around the types of ads where We don't allow remarketing. When creating remarketing lists, We cannot use any sensitive information about Users. This includes information such as their financial status, sexual orientation, and other sensitive categories. As Adwords advertisers, We are restricted from and will not perform the following actions:

- Running ads that collect Personally Identifiable Information including, but not limited, to email addresses, telephone numbers, and credit card numbers
- Creating a remarketing list or creating ad text that specifically targets users in ways that are outlined as "prohibited" in the categories below.

Visitors/users can opt-out of Analytics for Display Advertisers and opt-out of customised Google Display Network ads by visiting the Ad Preferences Manager.

## **Creation, Migration and Use of Remarketing Lists**

We must have all rights necessary to create or otherwise obtain Remarketing Lists, migrate Remarketing Lists to, and use Remarketing Lists or Similar Audience Lists on the Properties. Google will not allow another advertiser to use your information in the Remarketing Lists or Similar Audiences Lists without your consent.

## **Software and equipment**

It is your responsibility to acquire and maintain, at your own expense, the computer hardware, software, communications infrastructure and access accounts required to access the sites.

## **Social media Terms And Conditions**

These Social Terms apply to all Communications which originate from or reference FUDGEEZ their affiliates or subsidiaries. These Terms and Conditions are to be read in conjunction with the General Website Terms and Conditions. Your Communication access, use and/or consumption is subject to these Social Terms. If you do not agree to be bound by these Social Terms you should not access, use and/or consume the Communications or any other form of communication of these Social Terms governed.

## **Interpretation**

Below are several terms and phrases which are used in the Social term and which have specific meanings for these Social Terms:

- "Communications" means messages, notices, documents and/or other materials which are published to or disseminated through the social networks



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- “Contractors” means any legal or natural person who is contracted to render services or provide products to FUDGEEZ and who is not an Employee of FUDGEEZ (“Contractor” has a corresponding meaning)
- “Employees” means FUDGEEZ Employees (“Employee” has a corresponding meaning)
- “Social Networks” means online social networks, social media generally and similar communication tools including, but not limited to, blogs, Facebook, WhatsApp and Twitter;
- “Social Terms” means FUDGEEZ website located at <https://fudgeez.co.za>

## Communication purposes

The Communications are intended to provide general information regarding FUDGEEZ, its products, goods and services, and other information which may be of interest to you. The information presented in or through the Communications including all research, opinions or other content is not intended to and does not constitute financial, accounting, tax, legal, investment, consulting or other professional advice or services. FUDGEEZ does not act or purport to act in any way as a financial advisor or a fiduciary capacity. Before making any decisions or taking any action which might affect your finances or business you should take appropriate advice from a suitably qualified professional or financial adviser. Communications may include technical, typographical or other inaccuracies and you are urged to contact FUDGEEZ to confirm all information contained in the Communications before placing any reliance on it. Changes are periodically made to the information presented through the Communication and these changes may be incorporated into new Communications. FUDGEEZ reserves the right to alter or amend any criteria or information set out in the Communications without notice. If the Communications contain statements or information which relate to projections, plans or objectives or future economic performance you should be aware that these projections are only predictions and that actual events or results may differ materially. Representations and opinions are provided for information purposes only.

## Confidentiality

The communications may contain information that is confidential, private or privileged. If you are not the intended recipient of this information (or the intended recipient’s authorised representative) you must:

- Notify FUDGEEZ of this fact immediately by email, or telephone and delete the Communication from your system, where appropriate
- Refrain from storing, printing, copying, forwarding, extracting or disclosing any information contained in the Communication or any part thereof
- Refrain from reading, storing, using, selling, or incorporating any information contained in the Communication into any database or mailing list for whatever reason, including for, but not limited to, purposes of spamming or marketing.

Failure to do so may amount to the unlawful interception of the communication; breach of privilege and/or confidentiality; the infringement of copyright and/or infringement of the right to privacy, thus potentially exposing You to both criminal and civil liability.

## Amendments

FUDGEEZ reserves its right to amend or wholly replace these Social Terms. You agree that you remain solely responsible for reviewing these Social Terms, as amended from time to time, and satisfying yourself that you remain in agreement with these Social Terms.

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## Liability Limitation

Neither FUDGEEZ, their affiliates or subsidiaries, the communication's originator, nor any other FUDGEEZ representative shall be liable for any loss, damage or expense of whatever nature (including without limitation that caused by the corruption or loss of data, damage to software programs and interruption of business operations) resulting directly or indirectly from the transmission of the communication (including without limitation any malicious software code or viruses transmitted together with or obtained through the communication, or any corruption to or loss of data caused or facilitated by the communication).

The views and opinions expressed in the communication do not necessarily reflect FUDGEEZ views and opinions. In particular, no employee or contractor is permitted to send (and you agree that FUDGEEZ shall not be liable or responsible for):

- Unsolicited commercial messages where recipients of unsolicited e-mail have not specifically opted to receive or, having done so, have indicated their unwillingness to receive further unsolicited email ("spam")
- Messages that infringe any third party's copyright, trademarks or other rights and interests ("infringement content")
- Messages containing content that is offensive, derogatory, racist, defamatory or otherwise unlawful ("offensive content")
- If the communication constitutes spam, contains infringing content or offensive content, or was otherwise sent for purposes unrelated to the official business of FUDGEEZ, FUDGEEZ shall not be liable for any loss, damage or expense of whatever nature, howsoever arising resulting from your receipt, use and/or consumption of the email.

## No Contract

You agree that you may not rely on the Communication, either wholly or in part, as constituting a contract between you and FUDGEEZ (or otherwise has any contractual significance whatsoever) unless FUDGEEZ expressly states, in writing, that the Communication is intended for such purposes.

## 18. Availability of Website and Online Ordering

There will be times when the availability of the website or app may be interrupted for scheduled maintenance or upgrades, for emergency repairs, or due to failure of telecommunication links and equipment that are beyond our reasonable control, and we will not be liable for any inconvenience, loss or damage suffered as a result of such interruptions. The website and app require internet access to function. We are not responsible for any interruption to your use of the app or website due to a lack of internet connection.

These Terms will be governed and construed following the laws of the Republic of South Africa, and any disputes between you and us relating to these Terms will be subject to the jurisdiction of the relevant South African court. If a provision of these Terms is determined by any court or other competent

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authority to be unlawful and/or unenforceable, the other provisions will continue in effect. If any unlawful and/or unenforceable provision would be lawful or enforceable if part of it were deleted, that part will be deemed to be deleted, and the rest of the provision will continue in effect. Nothing in these Terms is intended to unlawfully limit or restrict any rights or obligations in terms of the Consumer Protection Act, 2009 or the Protection of Personal Information Act, 2013.

Any Order of at least **R60** is required to qualify for delivery. FUDGEEZ reserves the right not to deliver to certain areas for distance, security and/or safety reasons. Please check online or ask your nearest FUDGEEZ outlet if you fall within their specific delivery area.

Online ordering is only available in South Africa, with pick up and delivery within the available FUDGEEZ outlets.