

Terms and Conditions for MaxBikeProducts

Please note that if you do not agree to the Terms and Conditions of this web site, you must leave the site immediately, as further use will bind you to these terms and conditions.

Table of Contents

- 1 Definitions
- 2 Customer bound by Terms and Conditions
- 3 Services Provided
- 4 Commencement Date and Duration
- 5 Acceptable Use of the Web Site by Users
- 6 Security Measures and Technical Specifications
- 7 Disclaimer
- 8 Limitation of liability
- 9 Indemnity
- 10 Privacy and Confidentiality
- 11 Cession of this Agreement
- 12 Intellectual Property
- 13 Warranties and Guarantees
- 14 Entire Agreement
- 15 Waiver and Indulgences
- 16 Termination
- 17 Summary Termination
- 18 Breach of Agreement
- 19 Governing Law and Disputes
- 20 Electronic Communications
- 21 Additional Information Required by ECT Act

1 Definitions

- 1.1 "Agreement" or "Terms and Conditions" means this Agreement between MAXBIKEPRODUCTS and the Customer together with any annexures hereto, as amended from time to time and as made available on the Web Site.
- 1.2 "Business Day" means any day other than a religious holiday, a Saturday, Sunday or public holiday officially recognised as such in the Republic of South Africa.
- 1.3 "Confidential Information" means technical, production, financial and marketing know-how, methods, techniques, data strategies and trade secrets of the relevant party as well as each party's computer technology, business activities and products and general services and any other matters which relate to the business and affairs of each party which is non-public, confidential and not readily available to competitors of such party in the ordinary course of business and to which the other party, its employees and agents may gain access pursuant to the provisions of this Agreement.
- 1.4 "Customer" or "you" means the persons and/or legal entities who accept these Terms and Conditions and use the Web Site, and whose full and further details are provided to MAXBIKEPRODUCTS by means of the Web Site, which details the Customer chooses as its addresses for the purposes of receiving notices as contemplated in this Agreement.
- 1.5 "ECT Act" means that Electronic Communications and Transactions Act no 25 of 2002, as amended from time to time. A copy of the act can be accessed https://www.gov.za/sites/default/files/gcis_document/201409/a25-02.pdf.
- 1.6 "Personal Information" means that information as defined as such by the Promotion of Access to Information Act no 2 of 2000.
- 1.7 "Registration" or "Registering" means the process of signing up to the Services as provided by MAXBIKEPRODUCTS by means of the Web Site and includes the provision of personal information and agreeing to these Terms and Conditions.
- 1.8 "MAXBIKEPRODUCTS" means Malcolm Pearson trading as MAXBIKEPRODUCTS, together with its successors-in-title and assigns of 29 Adelaide Drive, Glenashley, Durban which address it hereby selects as domicilia citandi et executandi and of 29 Adelaide Drive, Glenashley, Durban, email malcolmp@maxbikeproducts.com, which afore going addresses it hereby selects as addresses for the purposes of receiving notices as contemplated in this Agreement.
- 1.9 "Services" means various data that is provided to the User from various sources by means of the Web Site as set out in clause 3 of these Terms and Conditions.
- 1.10 "SMS" means Short Message System, a text-only communication medium used by cellular telephones.
- 1.11 "User" means each single natural person using the Web Site.
- 1.12 "User Account" means a registration account which is protected by a username and password.
- 1.13 "Web Site" means <https://www.maxbikeproducts.com>.
- 1.14 "You" means the Customer.

2 Customer bound by Terms and Conditions

- 2.1 By using and/or Registering on the Web Site you agree and undertake to be bound by these Terms and Conditions of Use.
If you do not accept these Terms and Conditions you must leave the Web Site immediately as further usage of same will bind you to these terms and conditions.
- 2.2 MAXBIKEPRODUCTS may update these Terms and Conditions from time to time without any notice to you. By using the Web Site after these Terms and Conditions have been updated you agree to be bound by the updated Terms and Conditions. The date at the top of these Terms and Conditions indicates when last these Terms and Conditions were

varied and certificate issued by a member of MAXBIKEPRODUCTS, whose appointment, qualification and authority need not be proved, shall be prima facie proof of the date of publication and content of the current version and all previous versions of these Terms and Conditions.

3 Services Provided

- 3.1 General Users may browse the Web Site for interesting topics and follow further links to similar web sites of interest.
- 3.2 Via a secure login, MAXBIKEPRODUCTS allows Users to purchase products made available.
- 3.3 MAXBIKEPRODUCTS endeavours to provide services on a 24 hours, 7 days a week basis, however cannot be held accountable should dependent services interrupt such service.

3.4 Data

- 3.4.1 MAXBIKEPRODUCTS will not be held liable for the quality, correctness or existence of the data that is provided by the service.

3.5 Costs

- 3.5.1.1 All prices are as stipulated on the online shop. As our business is below the below the threshold of turnover for VAT, we are not charging for or claiming VAT on purchases.

4 Commencement Date and Duration

- 4.1 This Agreement is effective from the first time you visit this Web Site and will remain valid until you leave the site.

5 Acceptable Use of the Web Site by Users

- 5.1 You may not modify, translate, reverse engineer, decompile, disassemble or create derivative works of the Web Site or otherwise attempt to defeat, avoid, by-pass, remove, deactivate or otherwise circumvent any security mechanisms.
- 5.2 You agree that you will at all times keep the Web Site, all information relating to your use of the Web Site including any benchmarks, performance results and other information, confidential unless otherwise expressly agreed in writing by MAXBIKEPRODUCTS.
- 5.3 Should the User become aware of any threat to the security of the Web Sites or to the MAXBIKEPRODUCTS Services generally the User will inform MAXBIKEPRODUCTS immediately and take appropriate steps to minimise any damage that may occur if appropriate.
- 5.4 The User agrees and warrants that its log-in name and password shall:
 - 5.4.1 be used for personal use only; and
 - 5.4.2 not be disclosed to any third party aside from the User Administrator.
- 5.5 Hyperlinks to the MAXBIKEPRODUCTS web site from any other source shall be directed at the home page of the MAXBIKEPRODUCTS web site. MAXBIKEPRODUCTS shall not be liable, in any manner whatsoever, for any damage, loss or liability that resulted from the use of content from the MAXBIKEPRODUCTS web site. Persons that wish to link to content beyond the home page of the MAXBIKEPRODUCTS web site shall do so at their own risk and indemnify MAXBIKEPRODUCTS against any loss, liability or damage that may result from the use of content from the MAXBIKEPRODUCTS web site.
- 5.6 Users may quote small and reasonable amounts of content available from the MAXBIKEPRODUCTS web site only if such quote is placed in inverted commas and acknowledged.
- 5.7 No person may frame the MAXBIKEPRODUCTS web site, in any manner whatsoever, without the prior written consent of MAXBIKEPRODUCTS.

- 5.8 Apart from bona-fide search engine operators and use of the search facility provided on the MAXBIKEPRODUCTS web site by Users, no person may use or attempt to use any technology or applications (including web crawlers or web spiders) to search or copy content from the MAXBIKEPRODUCTS web site for any purposes, without the prior written consent of MAXBIKEPRODUCTS.
- 5.9 All licenses and/or permissions granted in terms of this clause 5 are provided on a non-exclusive and non-transferable basis and may be terminated or cancelled by MAXBIKEPRODUCTS at any time without giving reasons therefore.

6 Security Measures and Technical Specifications

- 6.1 You agree that MAXBIKEPRODUCTS may take all reasonable steps to ensure the integrity and security of the Web Site and back-office applications.
- 6.2 Personal information may only be accessed by authorized employees of MAXBIKEPRODUCTS who have agreed to respect the confidentiality of the data. This information is password protected. User information is confirmed by email as a security measure. Personal Information is housed at secure solution which is backed on a regular basis.

7 Disclaimer

- 7.1 The Web Site and the material contained herein is provided by MAXBIKEPRODUCTS and by third party providers and as such, while MAXBIKEPRODUCTS tries to provide quality information it makes no claims, promises or guarantees about the accuracy, completeness, or adequacy of the information contained in or linked to through this Web Site and any associated web sites.
- 7.2 MAXBIKEPRODUCTS does not accept any responsibility if any connection, reference, hyperlink or information is unavailable or incorrect and makes no representations that the Services will be uninterrupted or error free.
- 7.3 The Web Site is provided on an "as is" basis and has not been compiled to suit individual User needs. You are solely responsible to ensure that the Web Site will meet your needs and that the hardware and software that you use is compatible with the Web Site.
- 7.4 Any information contained in the Web Site does not constitute legal advice nor does it express the official opinion of MAXBIKEPRODUCTS. As legal advice is normally dependant on the specific circumstances of each case and the laws prevailing at that time, nothing provided herein should be used as a substitute for the advice of competent counsel.
- 7.5 Neither MAXBIKEPRODUCTS nor any of its agents, representatives, employees and successors in title shall be liable for any damage, loss or liability of whatsoever nature arising from the use or inability to use any Service provided on the Web Site.

8 Limitation of liability

- 8.1 Notwithstanding the above, in the event that MAXBIKEPRODUCTS is found to be liable for any direct damages suffered by you or any third party, such liability will be limited to an amount equal to 1 (one) month's revenue paid to MAXBIKEPRODUCTS less all associated costs in running the business, taken from the average monthly revenue during the 6 (six) month period immediately preceding the date upon which the claim for such damages arose.

9 Indemnity

- 9.1 The Customer hereby indemnifies MAXBIKEPRODUCTS from any claim for damages (including but not limited to consequential damages and damages based on pure economic loss) which is based on any actions or omissions which are committed by its agents, employees and representatives (which includes, but is not limited to, Users of the Web Site).

10 Privacy and Confidentiality

- 10.1 MAXBIKEPRODUCTS shall take all reasonable steps to protect the personal information of Users.
- 10.2 On registration MAXBIKEPRODUCTS electronically collects, stores and uses the following personal information of Users:
 - 10.2.1 name and surname;
 - 10.2.2 non-personal browsing habits and click patterns;
 - 10.2.3 e-mail address; and
 - 10.2.4 IP address;
- 10.3 The abovementioned information for the following purposes:
 - 10.3.1 to greet the User when he/she accesses the Web Site;
 - 10.3.2 to compile non-personal statistical information about browsing habits, click-patterns and access to the Web Site.
 - 10.3.3 to verify the identity of the User when using the services of MAXBIKEPRODUCTS;
- 10.4 The User may elect not to receive any promotional communications from MAXBIKEPRODUCTS and/or its partners / affiliates by opting out of any communication using the unsubscribe links, or by emailing the owner of the site with the subject "unsubscribe".
- 10.5 MAXBIKEPRODUCTS shall not disclose personal information from Users unless:
 - 10.5.1 the User consents thereto;
 - 10.5.2 MAXBIKEPRODUCTS is ordered to disclose this information by a court of law;
- 10.6 MAXBIKEPRODUCTS owns and retains all rights to non-personal statistical information collected and compiled by MAXBIKEPRODUCTS.
- 10.7 For further information on the use and collection of Personal Information please consult MAXBIKEPRODUCTS's Web Site.

11 Cession of this Agreement

- 11.1 You agree not to cede, assign or sell the rights herein accorded to you without the written consent of MAXBIKEPRODUCTS, which consent will not be unreasonably withheld. MAXBIKEPRODUCTS may cede, assign or sell the rights contained herein on written notice to you.

12 Intellectual Property

- 12.1 All the content, trademarks and data on this Web Site, including but not limited to, software, databases, text, graphics, icons, hyperlinks, private information, designs and agreements, are the property of or licensed to MAXBIKEPRODUCTS and as such are protected from infringement by local and international legislation and treaties.
- 12.2 The intellectual property of either party, which includes their trademarks, designs, copyrights and patents will remain the Intellectual Property of the appropriate party and no Intellectual Property rights are conferred on either party by these Terms and Conditions, nor is either party entitled to use the other's Intellectual Property without prior written consent by a duly authorised representative of the relevant party.

13 Warranties and Guarantees

- 13.1 To the maximum extent permitted, all warranties, conditions and terms that do not form part of this Agreement are excluded whether express or implied.

14 Entire Agreement

- 14.1 These Terms and Conditions constitutes the whole of the agreement between the parties hereto relating to the subject matter hereof and, save as otherwise provided herein, no amendment, alteration, addition, variation or consensual cancellation will be of any force or effect unless reduced to writing either placed on the Web Site as described in clause 2.2 or reduced to paper form and signed by both the parties hereto.

15 Waiver and Indulgences

- 15.1 No change, waiver or discharge of the Terms and Conditions shall be valid unless it is in writing and is signed by an authorised representative of the party against which such change, waiver or discharge is sought to be enforced, and any such change, waiver or discharge will be effective only in the specific instance and for the purpose given. No failure or delay on the part of either party hereto in exercising any right, power or privilege under this agreement will operate as a waiver thereof, nor will any single or partial exercise of any right, power or privilege preclude any other or further exercise thereof or the exercise of any other right, power or privilege.

16 Termination

- 16.1 Written notice to the other which notice may be communicated electronically using the contact information as set out in the "Contact us" section on the web page and as provided by the Customer on the Web Site

17 Summary Termination

- 17.1 Either Party shall have the right at any time by giving written notice to the other Party to terminate this Agreement forthwith in any of the following events:
- 17.1.1 If either Party enters into liquidation whether compulsorily or voluntarily, otherwise than for the purposes of amalgamation or reconstruction, or compounds with its creditors or takes or suffers any similar action in consequence of debt;
 - 17.1.2 If the Customer purports to assign the burden of benefits of this Agreement without the written consent of MAXBIKEPRODUCTS;
 - 17.1.3 If any hostilities or acts of war break out or are threatened which may affect trading conditions in South Africa; and
 - 17.1.4 In the event of either of the Parties being unable to carry on business due to a force majeure.
- 17.2 In the event that a party breaches any clause of this agreement the non-defaulting party shall provide written notice of the breach of this agreement to the other, which notice may be communicated electronically. If the breach is not rectified within five (5) calendar days of the communication of the said notice the non-defaulting party shall be entitled, in addition to any other rights and remedies that it may have in terms of this agreement or otherwise, to terminate this agreement immediately by providing written notice to the other party without prejudice to any claims which such party may have for damages against the other.

18 Breach of Agreement

- 18.1 In the event that you breach of any of these Terms and Conditions (other than those which contain their own remedies or limit the remedies in the event of a breach thereof) MAXBIKEPRODUCTS shall be entitled, without prejudice to any other right it may have in law, to claim specific performance (if such is a competent remedy in the circumstances) or, by written notice to the defaulting Party, to cancel this Agreement immediately and, in either event, to claim such damages as it may thereby have suffered.
- 18.2 No cancellation of this Agreement shall affect the provisions of clauses which, expressly or by implication, are intended to survive the termination or cancellation of this Agreement.

19 Governing Law and Disputes

- 19.1 Save in respect of those provisions of the agreement which provide for their own remedies which would be incompatible with arbitration, a dispute which arises in regard to:
- 19.1.1 the interpretation of;
 - 19.1.2 the carrying into effect of;
 - 19.1.3 any of the Parties' rights and obligations arising from;
 - 19.1.4 the termination or purported termination of or arising from the termination of; and/or
 - 19.1.5 the rectification or proposed rectification of this agreement, or out of or pursuant to this agreement or on any matter which in terms of this agreement requires agreement by the parties, (other than where an interdict is sought or urgent relief may be obtained from a court of competent jurisdiction), shall be submitted to and decided by arbitration in accordance with the rules of the Arbitration Forum of South Africa (as amended by this Agreement).
- 19.2 The arbitration shall be held with only the Parties and their representatives present thereat in Durban, Republic of South Africa, and the arbitration proceedings shall be conducted in the English language.
- 19.3 It is the intention that the arbitration shall, where possible, be held and concluded in 21 (twenty one) working days after it has been demanded. The Parties shall use their best endeavours to procure the expeditious completion of the arbitration.
- 19.4 Save as expressly provided in this agreement to the contrary, the arbitration shall be subject to the arbitration legislation for the time being in force in the Republic of South Africa.
- 19.5 The arbitrator shall be an impartial practising advocate of not less than 5 (five) years standing appointed by the parties or, failing agreement by the Parties within 14 (fourteen) days after the arbitration has been demanded, at the request of either of the Parties the arbitrator shall be nominated by the President for the time being of the Law Society of the KwaZulu Natal (or its successor in the KwaZulu Natal). If that person fails or refuses to make the nomination, either party may approach the High Court of South Africa to make such an appointment. To the extent necessary, the court is expressly empowered to do so.
- 19.6 The Parties shall keep the evidence in the arbitration proceedings and any order made by any arbitrator confidential unless otherwise contemplated herein.
- 19.7 The arbitrator shall be obliged to give his award in writing fully supported by reasons.
- 19.8 The provisions of this clause are severable from the rest of this agreement and shall remain in effect even if this agreement is terminated for any reason.

- 19.9 The arbitrator shall have the power to give default judgement if any Party fails to make submissions on due date and/or fails to appear at the arbitration.

20 Electronic Communications

- 20.1 Save when specifically indicated otherwise all communications between you and MAXBIKEPRODUCTS may be conducted electronically.

21 Additional Information Required by ECT Act

- 21.1 MAXBIKEPRODUCTS Details:

21.1.1 Company Name: Malcolm Pearson trading as MAXBIKEPRODUCTS.

21.1.2 Address: 29 Adelaide Drive, Glenashley, Durban, 4051

21.1.3 Email address: malcolmp@maxbikeproducts.com

21.1.4 Telephone number: 031 572 2709