

## CUSTOMER TERMS AND CONDITIONS

### 1. INTRODUCTION

Mushroom Investments, trading as GoMushroom, is committed to maintaining integrity of the business, its sales and marketing plan, and its distribution network of independent agents. Mushroom Investments reserves the right in its absolute discretion to waive wholly or partially or to pardon or forgive wholly or partially any breach of any of the rules contained within this agreement. These conditions pertain to all products and/or services purchased from Mushroom Investments from time to time, unless stated otherwise by Mushroom Investments.

### 2. INTERPRETATION AND BUSINESS OPPORTUNITY

2.1. These terms and conditions refer to the products and/or services as indicated on any official company forms, price lists, quotations, orders or invoices.

2.2. Mushroom Investments shall be referred to as The Supplier.

2.3. Products and/or services refer to the goods, equipment, products and/or services supplied or rendered by The Supplier to The Agent pursuant to any order placed by The Agent with The Supplier.

2.4. The Agent shall mean the person whose name appears on the application, or in any other circumstances, any person or persons at whose request or on whose behalf The Supplier undertakes to supply any products, do any business, or provide any advice or service.

2.5. The Dealer or The Sponsor refers to the primary reseller of products and/or services of Mushroom Investments.

2.6. Words importing any one gender includes both genders.

2.7. The Agent is an independent agent, not employed by The Supplier and is responsible for their own Income Tax and Income Tax Returns

2.8 Commission or rebates to The Agent is in accordance with the marketing plan of The Supplier as per The Suppliers website (<http://www.gomushroom.co.za>) and are paid over to The Agent on the 15th day of each month provided that the commission amount is not less than R 100.00 (One hundred rand)

2.9 Commission statements, payment and down line reports can be viewed or downloaded from The Suppliers website (<http://www.gomushroom.co.za>)

2.10 None of The Suppliers product names, marketing material etc. may be used or be reproduced except with written consent of The Supplier or as supplied on The Suppliers' website (<http://www.gomushroom.co.za>). The Agent may not represent The Supplier in any way and The Supplier has no responsibility for any action or statement made by an Agent

### 3. QUOTED AND LISTED PRICES

3.1. The prices of and rebates applicable to the products and/or services sold or services rendered shall be the usual price as set out in The Suppliers' price list, available on The Suppliers' website (<http://www.gomushroom.co.za>) at the time of the sale of the products and/or services.

3.2. The Supplier has the right to change the prices of and rebates applicable to the products and/or services from time to time

3.3. The validity of any price or rebate quoted is subject to availability.

3.4. Any quote provided to The Agent by The Supplier may be changed at any time in the event of any increase in the cost price of the products and/or services, including currency fluctuations. Price increases will only be affected if the products and/or services have not yet been dispatched to The Agent.

3.5. Unless otherwise expressly stated, prices stated on The Suppliers' website are inclusive of value added tax (VAT)

#### 4. PAYMENT TERMS

4.1. The Agent shall pay the amount on the Application / Order Form. Payment is due immediately

4.2. The Supplier shall have the right to suspend deliveries and to exercise its rights in terms of these terms and conditions if any amount due by The Agent is unpaid.

#### 5. CREDIT FACILITIES

5.1. The Supplier's decision to grant credit facilities to The Agent and the nature and extent thereof is at the sole discretion of The Supplier.

5.2. The Supplier reserves the right to withdraw, increase or decrease any credit facilities at any time without prior notice.

#### 6. PLACING ORDERS

6.1. The Agent hereby confirms that the products and/or services on the Application / Order Form represent the products and/or services ordered by The Agent at the prices as per the price list

6.2. The Supplier will accept written orders provided that these orders are submitted on the official Application/Order form. All such orders and any variations to orders will be binding, subject to these standard terms and conditions and may not be varied or cancelled without prior written consent from The Supplier. The Supplier will not be responsible for any errors or misunderstandings occasioned by The Agent's failure to make the order in writing.

#### 7. DELIVERY

7.1. Subject to availability and receipt of payment, requests will be processed within 3 (three) working/business days.

7.2. Unless otherwise agreed, products and/or services shall be delivered to The Agent at the physical address or closest Post Office provided by The Agent on the application form.

7.3. Only when the delivery waybill is signed by The Agent and/or its authorised representative and/or its nominated agent and held by The Supplier, shall prima facie proof be accepted by The Supplier that delivery was made to The Agent.

7.4. The Supplier shall be entitled to split the delivery of the products and/or services ordered in the quantities and on the dates it decides with the prior consent of The Agent, which consent shall not be unreasonably withheld.

7.5. The Supplier engages a third party on its behalf to transport any products and services purchased by The Agent.

7.6. The Supplier does not guarantee that the products and/or services will be dispatched or delivered on any particular date and time, and The Agent shall have no claim against The Supplier in respect of any loss occasioned by any reasonable delay in dispatch or delivery of any products and/or services, nor may The Agent cancel any order by reason of such reasonable delay.

7.7. Short deliveries or products and/or services damaged in transport must be reported to The Suppliers head office within 24 (twenty four) hours of receipt.

7.8. Delivery costs shall be the responsibility of The Supplier where explicitly specified by The Supplier, otherwise The Supplier reserves the right to charge delivery charges, as and when necessary.

## 8. LIABILITY AND INDEMNITY

8.1 The Agent specifically agrees that it will not hold The Supplier liable for any defects, breakdown or insufficiency in the products or as a result of a failure of the products or The Agent's inability to use the products.

8.2 The Supplier shall not be liable to The Agent for any loss or damage which The Agent may suffer or incur as a consequence of utilising the products and/or services irrespective of whether such loss or damage is direct or consequential.

8.3 The Supplier shall not be liable for any misuse of the products or services. 8.4 The Supplier shall not be liable for any alterations made to product

8.5 Product statements made are those of the suppliers and not that of The Supplier

## 10. TERMINATION OF THIS AGREEMENT

This agreement commences on the date of acceptance by The Agent of these terms and conditions and continues indefinitely unless terminated in writing by either The Supplier or The Agent within the notice period of 15 (fifteen) days

## 11. CESSION AND ASSIGNMENT

11.1. The Supplier shall without notice to The Agent be entitled to cede, sell, pledge and/or assign all or any of The Supplier's rights under this agreement, and/or its right of ownership in the products and/or services and if such cession, sale, pledge or hypothecation takes place.

11.2. The Agent shall thereupon:

11.2.1. Hold the products and/or services, products or services on behalf of, and in accordance with, the instructions and directions of any such cessionary lies in place of The Supplier;

11.2.2. If so required, by any cessionary, make all payments directly to such cessionary.

11.2.3. Unless the context otherwise indicates, any reference to The Supplier shall be deemed to include reference to its successor-in-title.

11.3. The Agent shall not be entitled to cede their rights nor assign their obligations under these terms and conditions.

## 12. RETURNED PRODUCTS AND/OR SERVICES

12.1. Whilst The Supplier is under no obligation, other than in the circumstances of clause 8 to accept the return of products and/or services, The Agent may apply in writing to The Supplier for permission to return products and/or services and if permission is given such products and/or shall be collected by The Supplier at an address and time pre-specified by The Agent and agreed upon by The Supplier, at The Supplier's cost.

12.2. The Agent may apply in writing to return any defective products and/or services to The Supplier at The Supplier's cost. The Supplier undertakes to replace such products and/or services with items of the same or similar specification, or repair to working order. No refunds will be considered in respect of return of defective products and/or services.

12.3. The Supplier reserves the right to offset the value of any products and/or services accepted for return against any amounts due by The Agent.

12.4. Products and/or services will only be deemed "returned" by The Supplier when faxed proof of a signed waybill is received by The Supplier.

12.5. On termination of this agreement, The Supplier shall collect the products and/or services from The Agent in the same condition as existed at the commencement of this agreement, fair wear and tear excepted.

12.6. Should The Supplier, despite having used reasonable endeavours, not be able to collect the products and/or services within 5 (five) days of account termination, for any reasons, or if the product and/or service is not accepted by The Supplier as being in good condition, the full cost of the product and/or service and courier costs will be charged to The Agent.

#### 14. WARRANTIES AND INDEMNITY

14.1. Products and/or services may be guaranteed under the manufacturer's product specific warranties only, and all other guarantees and warranties including common law guarantees and warranties in relation to products and/or services are hereby specifically excluded by The Supplier.

14.2. All guarantees are immediately null and void should any products and/or services be tampered with or should the "seals" on the products and/or services be broken by anyone other than The Supplier or its appointed nominee, or should the products and/or services be operated outside the manufacturer's specifications.

14.3. To be valid, guarantee claims must be supported by the original Application/Order form or tax invoice and the products and/or services must be in their original packaging and must be accompanied by all accessories and manuals must be intact. All items must be returned in "as new" condition.

14.4. No warranties whether express or implied shall apply, other than those provided in this contract. The Supplier specifically disclaims the implied warranty of merchantability and fitness for a particular purpose. No representation or warranty, including but not limited to statements of capacity, suitability for use or performance made by employees of The Supplier shall be considered to be a warranty by The Supplier. Any such statements made shall not give rise to any liability or whatsoever nature on the part of The Supplier, its employees, subcontractors or subsidiaries. The Supplier will not be liable to The Agent for any loss, damage or expense of any nature, whether direct, special, indirect or consequential, including but not limited to loss or profits arising out of The Supplier performance or agents' use of the products and/or services rendered.

14.5. The Agent indemnifies and holds The Supplier (including its employees, subcontractors or subsidiaries) harmless against all claims of whatsoever nature that may be brought or threatened against The Supplier by any third party arising from or in connection with any defect, latent or otherwise in any products and/or services supplied by The Supplier.

#### 17. GENERAL

17.1. The Supplier reserves the right in its sole discretion to vary or amend these terms and conditions, including without limitation, the prices of the products and/or services from time to time. The Supplier shall publish any such amendments on the Supplier website. Any use by The Agent of the products and/or services after any such amendment has been reflected on The Supplier's website shall be deemed to constitute acceptance by The Agent of such amendment. The Agent acknowledges and agrees that it is solely responsible for reviewing any such amendments on The Supplier's website from time to time and to make itself aware of any such changes. For the avoidance of doubt, it shall not be a defence against any assertion that The Agent accepted the amendments to this agreement and/or the prices, that The Agent was not aware of such changes.

17.2. This contract, as amended from time to time, represents the entire agreement between The Supplier and The Agent and shall govern all future contractual relationships between The Supplier and The Agent.

17.3. No amendment and/or alteration and/or variation and/or deletion and/or addition and/or cancellation of these terms and conditions, whether consensual or unilateral or bilateral shall be of any force and effect unless reduced to writing and signed by a director of The Supplier. No agreement, whether consensual or unilateral or bilateral, purporting or obligate The Supplier to sign a written agreement to amend, alter, vary, delete, add or cancel these terms and conditions shall be of any force and effect unless reduced to writing and signed by a director of The Supplier.

17.4. No relaxation, indulgence or extension of time which The Supplier may grant The Agent shall prejudice or be deemed to be a waiver or notation of any of The Supplier's rights in terms of these terms and conditions.

17.5. The Agent undertakes to notify The Supplier within 7 (seven) days of any personal information changes.

17.6. The headings in this document are included for convenience and are not to be taken into account for the purpose of interpreting this contract.

17.7. Each of the terms herein shall be separate and divisible terms and if any such term becomes unenforceable for any reason whatsoever, then that term shall be severable and shall not affect the validity of the other terms.

17.8 The Supplier reserves the right to send The Agent any notifications and/or promotional material via email and/or SMS as may be deemed necessary by The Supplier.

## 18. FORCE MAJEURE

If The Supplier is prevented from or restricted directly or indirectly from carrying out all or any of its obligations under this Agreement due to any reason and/or cause beyond the control of The Supplier or by reason of force majeure, The Supplier shall be relieved of its obligations in terms of this Agreement during such period.

## 19. BREACH

In the event of:

19.1 The Agent failing to settle any amounts owing in terms hereof on due date; or

19.2 any other breach by The Agent, should The Agent fail to remedy such breach within 48 (forty eight) hours after receipt of notice to that effect from The Supplier; or

19.3 The Agent repeatedly breaching this agreement in such manner that The Agent's conduct is inconsistent with the intention or ability of The Agent to carry out the terms of the agreement.

## 20. LAW AND JURISDICTION

20.1. These terms and conditions shall be governed and construed under and in accordance with the laws of the Republic of South Africa

20.2. The Supplier products and/or services are only available to citizens residing within South Africa.

20.3. The Supplier shall, at its option and notwithstanding that the amount of its claim or the nature of the relief sought exceeds the jurisdiction of the Magistrate's Court be entitled to institute action out of such court.

20.4. A certificate issued and signed by any director, member or manager of The Supplier, whose authority need not be proved, in respect of any indebtedness of The Agent to The Supplier or in respect of any other fact, including but without limiting the generality of the foregoing, the fact that such products and/or services were sold and delivered, shall be prima facie proof of The Agent's indebtedness to The Supplier and prima facie proof of delivery of the products and/or services in terms of this contract.

20.5. Any print out of computer evidence tendered by The Supplier shall be admissible evidence and The Agent shall not be entitled to object to the admissibility of such evidence purely on the grounds that such evidence is computer evidence.

20.6. The Agent's address in the Agent application form shall be recognised as The Agent's domicilium for all purposes in terms of this contract whether in respect of the serving of any court process, notices that payment of any amount or communications of whatever nature.

20.7. In the event of The Agent breaching any of its obligations and/or failing to timorously make payment of any amount to The Supplier, The Agent agrees to pay, and shall be liable to pay, all legal costs incurred by The Supplier in enforcing its rights in terms of these terms and conditions on the attorney/own client scale including collection charges, tracing agent's fees and air fares.

20.8. Any document will be deemed duly received by The Agent within:

20.8.1. 3 (three) working days of pre-paid registered mail to any of The Agent's business or postal addresses or the domicilium address of The Agent, or to the personal address of any director, member or owner of The Agent;

20.8.2. 24 (twenty four) hours of being faxed to any of The Agent's fax numbers or any director, member of owner's fax numbers; or

20.8.3. on being delivered by hand to The Agent or any director, member of The Agent; or

20.8.4. 48 (forty eight) hours if sent by overnight courier.

20.9. The Agent agrees that neither The Supplier nor any of its employees will be liable for any negligent or innocent misrepresentations made to The Agent, nor shall The Agent be entitled to resile from these terms and conditions on those grounds.

20.10. Legal Jurisdiction in respect of any dispute arising from this agreement shall be at the Magistrates Court in Krugersdorp

## 21. ARBITRATION

21.1. The Supplier may refer any dispute arising from or in connection with this contract to arbitration which arbitration award shall be final and binding on The Agent and The Supplier.

21.2. The arbitrator will be a person agreed upon by the parties or failing agreement, appointed by the Arbitration Foundation of Southern Africa, who shall then finally resolve the dispute or issue in accordance with the Rules of the Arbitration Foundation of SA.

21.3. The arbitration will be held at Krugersdorp, South Africa.

## 22. NEGOTIABLE INSTRUMENTS

Acceptance of a negotiable instrument from The Agent shall not be deemed to be a waiver of The Suppliers' rights under this contract. In relation to cheques furnished by The Agent to The Supplier, The Agent waives its right to insist on notice of dishonour or protest being given to it on the event that the cheque is dishonoured.

## 23. THE SUPPLIER WEBSITE

- 23.1. The website (<http://www.gomushroom.co.za>) is run by The Supplier.
- 23.2. Payment may be made via Visa or MasterCard credit cards or by bank transfer into the The Supplier bank account, the details of which will be provided on request.
- 23.3. Credit card transactions will be acquired for The Supplier via **Virtual Card Services (Pty) Ltd | Vat Reg:4460163936** who are the approved payment gateway for The Supplier. **Virtual Card Services** uses the strictest form of encryption.
- 23.4. Agent details will be stored by The Supplier separately from card details which are entered by the client on **Virtual Card's** secure site.
- 23.5. The merchant outlet country, at the time of presenting payment options to the cardholder, is South Africa. Transaction Currency is South African Rand (ZAR).
- 23.6. The Supplier takes responsibility for all aspects relating to the transaction, including sale of goods and services sold on this website, agent service and support, dispute resolution and delivery of goods
- 23.7. The Supplier website is governed by the laws of South Africa.

## 24. DISCLOSURE OF PERSONAL INFORMATION

- 24.1. The Supplier shall take all reasonable steps to protect the personal information of users.
- 24.2. The Agent understands that the personal information given in the Agent Application form or pursuant to any order placed by The Agent with The Supplier will be taken as true and correct and will be used by The Supplier for the purposes of delivery and commission payments

## 25. THE SUPPLIER CONTACT DETAILS

- 25.1. The Supplier chooses as its domicilium citandi et executandi for all purposes under this agreement, whether in respect of court process, notice, or other documents or communication of whatsoever nature:
  - 25.1.1. 22 Ackermann Street, Witpoortjie, Roodepoort, Gauteng, South Africa
- 25.2. The Supplier contact details are as follows:
  - 25.2.1. Email: [info@gomushroom.co.za](mailto:info@gomushroom.co.za)
  - 25.2.2. Fax: 0865484818