

TO BE GIFT BOXES (PTY) LTD TERMS OF SERVICE

These Terms of Service ("Terms") are effective as of : 1 December 2020 "Effective Date"

READ THESE TERMS CAREFULLY BEFORE BROWSING THIS WEBSITE. YOUR CONTINUED USE OF THIS WEBSITE INDICATES THAT YOU HAVE BOTH READ AND ACCEPT THESE TERMS. YOU CANNOT USE THIS WEBSITE IF YOU DO NOT ACCEPT THESE TERMS. ALL SECTIONS OF THESE TERMS ARE APPLICABLE TO ALL USERS UNLESS THE SECTION EXPRESSLY STATES OTHERWISE.

Clause 1 Introduction

- 1.1 The website <https://tobegiftboxes.com/> ("the Website") is operated and/or owned by To Be Gift Boxes (Pty) Ltd (bearing registration number: 2018/475462/07) (hereinafter referred to as "To Be Gift Boxes", "we", "our" or "us"). The Terms herein are entered into by and between To Be Gift Boxes and the User. Any reference to "To Be Gift Boxes", "we", "our" or "us", shall include our employees, officers, directors, representatives, agents, shareholders, affiliates, subsidiaries, holding companies, related entities, advisers, sub-contractors, service providers and suppliers.
- 1.2 These terms, including any document incorporated by reference herein, including, but not limited to the Privacy Policy (collectively, the "Terms") apply to any User who uses any one or more of the Services, accesses, refers to, views and/or downloads any information or material made available on the Website for whatever purpose (hereinafter referred to as "User", "you" or "your").
- 1.3 Accessing and/or use of the Website after the Effective Date will signify that you have read, understand, accept, and agree to be bound, and are bound, by the Terms, in your individual capacity and for and on behalf of any entity for whom you use the Website. Further, you represent and warrant that you have the authority to do so and that you are a Competent Person (as defined in the Protection of Personal Information Act, 4 of 2013, as amended).
- 1.4 To the extent permitted by applicable law, we may modify the Terms with prospective effect without prior notice to you, and any revisions to the Terms will take effect once a popup on the Website, advising of the update, has been agreed to by a User. Such modifications will require acceptance by you prior to your continued use of the Website, and shall thereby be construed as your consent to the amended or updated Terms. Your only remedy, should you not agree to these Terms, is to refuse acceptance of the amended or updated Terms, thereby preventing your use of this Website.

Clause 2 Terminology

- 2.1 "**Browser**" shall mean any person who visits any page of the Website, whether by landing at the home page or any other page through use of a hyperlink of

another website or by direct access to the Website and who has no intention of using, or does not use, the Services offered by us;

2.2 **“Business Days”** shall mean any days which are not a Saturday, Sunday or gazetted public holiday in the Republic of South Africa during working hours;

2.3 **“Cart”** shall mean the User’s Cart on the Website in which it stores intended purchases prior to payment being made;

2.4 **“Goods”** shall mean the products and/or services as made available to a User for purchase on the Website, and which shall include, inter alia, goods and/or services relating to the following: TO BE Gift Boxes sell gift items for any occasion;

2.5 **“Party”** or **“Parties”** shall mean To Be Gift Boxes (Pty) Ltd and/or or the User as the context implies;

2.6 **“Personal Information”** shall mean the Personal Information as required from the User in order to register for the Services;

2.7 **“Registration Process”** refers to the Registration Process to be followed by a Browser on our Website in order to enable them to use the Services and thus make the transition from a Browser to a User;

2.8 **“Services”** shall refer to the Services provided by us to the User as set out in clause Clause 4 below;

2.9 **“Terms”** shall mean these Terms of Service as read together with the Privacy Policy; and

2.10 **“User”** shall mean the Browser who completes the Registration Process on the Website in order to make use of the Services.

2.11 Any use of the above terminology or other words in the singular, plural, capitalisation and/or he/she or they, are taken as interchangeable and therefore as referring to the same.

Clause 3 Your agreement to these Terms

3.1 Subject to, and on the basis of a User’s acceptance of the Terms, we grant to you a limited, revocable, non-transferable license to access and use the Website in accordance with the various policies and agreements which may govern such use and access.

Clause 4 Description of our Services

4.1 The Website enables you to shop for and purchase Goods.

Clause 5 Registration Process

- 5.1 Only Users may order and purchase Goods through the Website.
- 5.2 In order to register as a User you will, through the Registration Process, be prompted to provide login details as well as submit certain Personal Information as contained in the Privacy Policy.
- 5.3 The provisions pertaining to the processing of your Personal Information are set out more fully in our Privacy Policy.
- 5.4 In the event of a User being of the view that their login details are being used by someone else, please contact us immediately at info@tobegiftboxes.com.

Clause 6 Purchase of Goods

- 6.1 The Goods as selected by the User for purchase together with the individual price thereof shall be reflected in the User's Cart. The price of each of the Goods shall automatically be tallied in the Cart, as a total, which total shall be inclusive of VAT to the extent that we are registered for VAT.
- 6.2 The cost of delivery of the Goods shall also be included in the total comprising the User's Cart.

Clause 7 Payment

- 7.1 Payment may be made in one of the following manners:
 - 7.1.1 Credit Card - where payment is made by credit card, we may require additional information in order to authorise and/or verify the validity of payment. In such cases we are entitled to withhold delivery until such time as 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 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.
 - 7.1.2 Electronic Funds Transfer ("EFT") or Bank Transfer.
- 7.2 Goods will only be released for delivery once payment has been received into our banking account.

Clause 8 Delivery of Goods

- 8.1 The Goods shall be delivered to the User through the services of a courier of our selection:
 - 8.1.1 The Goods shall be delivered to the User at the address selected during the payment process.

- 8.1.2 The Goods shall be delivered, where possible on a Business Day, but this shall depend on the courier company.
- 8.1.3 Any additional charges that may be levied in respect of the delivery of the Goods or forced return of the Goods such as, but not limited to, custom blockage in respect of a User outside of the Republic of South Africa, shall be for the User's account. Alternatively;
- 8.2 The Goods shall be made available for collection by the User at for a period of two weeks after the order was placed on the Website.
- 8.3 We shall endeavour to have the Goods delivered to you as soon as reasonably possible, we shall not be held liable for any late deliveries attended to.
- 8.4 Our obligation to provide the Goods to you is fulfilled upon delivery/collection thereof. We are not responsible for any loss or unauthorised use of the Goods after provision thereof to you.

Clause 9 Warranties by the User

- 9.1 The User warrants and represents that the Personal Information provided to us is and shall remain accurate, true and correct and that the User will update the Personal Information held by us to reflect any changes as soon as possible.
- 9.2 The User further warrants that when registering on the Website it:
 - 9.2.1 is not impersonating any person; and
 - 9.2.2 is not violating any applicable law regarding use of personal or identification information.
 - 9.2.3 Further and insofar as the Registration Process is concerned, the User warrants that the login details shall:
 - 9.2.3.1 be used for personal use only; and
 - 9.2.3.2 not be disclosed by a User to any third party.
- 9.3 The User agrees that, once the correct login details relating to the User's account have been entered, irrespective of whether the use of the Log in Details is unauthorised or fraudulent, the User will be liable for payment of any such Goods purchased.

Clause 10 Warranties by To Be Gift Boxes

- 10.1 We make no representation or warranty (express or implied) that the Website or Services will:
 - 10.1.1 meet a User's needs;

- 10.1.2 be accessible at all times;
- 10.1.3 be accurate, complete or current; or
- 10.1.4 be free from viruses.
- 10.2 Subject to any express terms, To Be Gift Boxes makes no representation or warranty as to the volume or subject area of Services accessible through the Website.
- 10.3 Except for any express warranties in these Terms the Services are provided “as is”. To Be Gift Boxes makes no other warranties, express or implied, statutory or otherwise, including but not limited to warranties of merchantability, title, fitness for a particular purpose or non-infringement. We do not provide any warranties against viruses, spyware or malware that may be installed on your computer as a result of you accessing or using the Website.
- 10.4 To Be Gift Boxes does not warrant that the use of the Website will be uninterrupted or error free, nor does To Be Gift Boxes warrant that we will review information for accuracy.
- 10.5 To Be Gift Boxes shall not be liable for delays, interruptions, service failures or other problems inherent in use of the internet and electronic communications or other systems outside the reasonable control of To Be Gift Boxes. While a User may have statutory rights, the duration of any such statutory warranties, will be limited to the shortest period to the extent permitted by required law.

Clause 11 Unauthorised use of the Website or email addresses as provided by us

- 11.1 A User may not use the Website for any objectionable or unlawful purpose.
- 11.2 A User, apart from uploading Personal Information as required when completing the Registration Process may also after the purchase of Goods add a review or comment relating to the Goods so purchased by it .
- 11.3 We reserve the right to remove any such review in the event that same is untrue, inflammatory or libellous.
- 11.4 A User undertakes not to send to us spam mail, or make use of other unsolicited mass e-mailing techniques.
- 11.5 A User shall not introduce any virus, worm, trojan horse, malicious code or other program which may damage computers or other computer-based equipment through email communication with us.
- 11.6 A User may not sell, redistribute or use information contained on the Website for a commercial purpose without our prior written consent.

- 11.7 A User may not remove or alter our copyright notices or other means of identification including any watermarks, as they appear on the Website or any of our emails.
- 11.8 A User understands and agrees that it is solely responsible for compliance with any and all laws, rules and regulations that may apply to its use of the Website or the Services.

Clause 12 Links to other Websites

- 12.1 The Website may contain links or portals to other websites. We have no control over websites operated by third parties and the User agrees that we are not responsible for and will have no liability in connection with a User's access to or use of any third-party website.

Clause 13 Limitation of Liability and Indemnity

- 13.1 The Website shall be used entirely at a User's own risk.
- 13.2 We are not responsible for, and the User agrees that we will have no liability in relation to, the use of and conduct in connection with the Website, or any other person's use of or conduct in connection with the Website, in any circumstance.
- 13.3 We cannot guarantee or warrant that any file downloaded from the Website or delivered to you via email will be free of infection or virus, worms, trojan horses or other code that has contaminating or destructive qualities. A User is responsible for implementing appropriate processes, systems and procedures to protect itself from this type of issue.
- 13.4 A User indemnifies us, and agrees to keep us indemnified, from and against any claim, loss, damage, cost or expense that we may suffer or incur as a result of or in connection with a User's improper use of or conduct in connection with the Website, including any breach by a User of these terms or any applicable law or licensing requirements.
- 13.5 To the maximum extent permitted by law we exclude all implied representations and warranties which, but for these terms, might apply in relation to a User's use of the Website.
- 13.6 To the extent that our liability cannot be excluded by law, our maximum liability, whether in contract, equity, statute or delict (including negligence), to a User will be limited to the minimum amount imposed by such law.
- 13.7 Notwithstanding anything to the contrary in these terms, in no circumstances will we be liable for any indirect, punitive or consequential loss or damages, loss of income, profits, goodwill, data, contracts, use of money or any loss or damages arising from or in any way connected to interruption of the Services of any type, whether in delict, contract or otherwise.

Clause 14 Copyright

- 14.1 To Be Gift Boxes and the contents of the Website are the property of To Be Gift Boxes, unless specified otherwise, and are protected by South African and international copyright laws. Furthermore, the compilation (meaning the collection, arrangement, and assembly) of all content on the Website and/or the Services, is our property, unless credit is attributed to the author thereof, and is, likewise, protected by South African and international copyright laws.
- 14.2 Except as stated in the Terms, none of the contents may be copied, reproduced, distributed, republished, downloaded, displayed, posted or transmitted in any form or by any means, including, but not limited to, electronic, mechanical, photocopying, recording, or otherwise, except as permitted by the fair use privilege under the South African copyright laws or without our prior written permission, which should such consent be provided, we reserve our right to withdraw such consent at any stage, in our sole and absolute discretion.
- 14.3 Users are expressly prohibited to “mirror” any content, contained on the Website, on any other server unless our prior written permission is obtained, which should such consent be provided, we reserve our right to withdraw such consent at any stage, in our sole and absolute discretion.
- 14.4 The User is granted a limited, revocable, and non-exclusive right to create a hyperlink to the Website, so long as the link does not portray us, our affiliates, Goods or Services in a false, misleading, derogatory, or otherwise offensive manner. A User may not use our logo or other proprietary graphic or trademark as part of the link without our permission or the permission of our affiliates or content suppliers.
- 14.5 All trademarks and copyrights, together with any other intellectual property rights, in and to any of the content of the Website, where not evidently that of third parties, are the exclusive property of To Be Gift Boxes.

Clause 15 Intellectual Property

- 15.1 A User undertakes not to attempt to decipher, decompile, disassemble or reverse engineer any of the software or code comprising or in any way making up a part of the Website including any algorithm used by us.
- 15.2 We own or are licensed to use all intellectual property on the Website. A User may not use any of our intellectual property for any purpose other than as may be required to use the Website for its intended purpose.

Clause 16 Breach

- 16.1 If either Party commits a breach of the Terms and fails to remedy such breach within 7 (seven) days of receipt of written notice requiring the breach to be remedied, then the Party giving notice shall be entitled, at its option, either to

cancel the Terms and claim damages or alternatively to claim specific performance of all the defaulting Party's obligations, together with damages, if any, whether or not such obligations have fallen due for performance.

Clause 17 Arbitration

17.1 Any dispute which arises between the Parties in respect of the Terms shall require the Parties to use their best endeavours to resolve the dispute informally within 7 (seven) days of the dispute having been raised in writing.

17.2 If either Party provides written notification to the other that such attempt has failed then each Party shall attempt to agree upon the appointment of a suitably qualified mediator, within 10 (ten) days of such dispute being referred.

17.3 If agreement is not reached as to the appointment of such mediator within 10 (ten) days after either Party has in writing called for the appointment of a mediator, or where an appointment has been agreed upon and such mediator is not able to mediate a resolution of such dispute within 30 (thirty) days after such appointment then any Party may give written notice to the other Parties referring the dispute to arbitration in accordance with the rules of Arbitration Foundation of South Africa ("AFSA") by an arbitrator or arbitrators appointed by AFSA.

17.4 Either Party may demand that a dispute be referred to arbitration by giving written notice to that effect to the other Party. This clause shall not preclude either Party from obtaining interim relief on an urgent basis from a court of competent jurisdiction pending the decision of the arbitrator.

17.5 The arbitration shall be held –

17.5.1 at/in Gauteng or other venue agreed by the parties in writing;

17.5.2 in English; and

17.5.3 immediately and with a view to its being completed within 21 (twenty one) days after it is demanded.

17.5.4 The Parties irrevocably agree that the decision in arbitration proceedings:

17.5.4.1 shall be final and binding upon them;

17.5.4.2 shall be carried into effect;

17.5.4.3 may be made an order of any court of competent jurisdiction.

Clause 18 Assignment and Novation:

18.1 We may assign or novate any of our rights or obligations under these Terms without a User's consent. A User may not assign or novate any of his/her rights.

Clause 19 Force Majeure:

19.1 The failure of either Party to fulfil any of their obligations under these Terms shall not be considered to be a breach of, or default provided such inability arises from an event of Force Majeure, and that either of the Parties who may be affected by such an event has taken all reasonable precautions, due care and reasonable alternative measures in order to meet these Terms, and has informed the other as soon as possible about the occurrence of such an event.

19.2 During the subsistence of Force Majeure, the performance of both Parties under these Terms shall be suspended, on condition that either of them may elect to cancel any Services should the event of Force Majeure continues for more than 14 (fourteen) days by giving written notice to the other.

Clause 20 General

20.1 To the extent permitted by law, these Terms shall be governed by and be construed in accordance with South African law, and any dispute arising out of these Terms shall be submitted to the competent South African courts having the requisite jurisdiction to hear the matter.

20.2 Subject to the dispute resolution provisions above, to the extent necessary and/or possible, you consent to the non-exclusive jurisdiction of the High Court in Gauteng or an alternative appropriate South African court seized with appropriate jurisdiction in all disputes arising out of the Terms, our Services, and/or related agreements incorporated by reference.

Clause 21 Severance

21.1 If any of these terms are deemed invalid or unenforceable for any reason (including, but not limited to the exclusions and limitations set out above), then the invalid or unenforceable provision will be severed from these Terms and the remaining terms will continue to apply. Failure by us to enforce any of the provisions set out in these Terms and/or any other agreement, or failure to exercise any option to terminate, shall not be construed as a waiver of such provisions and shall not affect the validity of these Terms or of any agreement or any part thereof, or the right thereafter to enforce each and every provision.

Clause 22 Domicilium Citandi Et Executandi and Contact Information

22.1 The User and To Be Gift Boxes choose as their respective domicilium citandi et executandi for the purpose of legal proceedings and for the purpose of giving or sending any notice provided for or necessary of these Terms, the following:

22.1.1 To Be Gift Boxes (Pty) Ltd: 80 Sovereign Drive, Route 21 Corporate Park. Email: info@tobegiftboxes.com.

22.1.2 User: The address as provided when registering on the Website.

- 22.2 Both the User and To Be Gift Boxes may change its domicilium to any other physical address or email address by written notice to the other to that effect. Such change of address will be effective 7 (Seven) days after receipt of notice of change of domicilium.
- 22.3 All notices to be given in terms of these Terms will:
- 22.3.1 be given in writing;
 - 22.3.2 be delivered or sent by email; and
 - 22.3.3 be presumed to have been received on the date of delivery.