

# WEBSITE TERMS AND CONDITIONS

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## 1 DEEMED ACCEPTANCE

- 1.1 By accessing and using the Website, the User agrees to be bound by the Terms and Conditions set out herein.
- 1.2 If the User does not wish to be bound by the Terms and Conditions, the User may not access, display, use, download, and/or otherwise copy or distribute and of the Content on the Website.

## 2 INTERPRETATION

- 2.1 In these Terms and Conditions, unless inconsistent with or otherwise indicated by the context –
  - 2.1.1 “**Content**” means any and all content displayed on the Website or the Online Profiles at any given time, and shall include (but shall not be limited to) confidential information, client lists, literary works, marketing and business information, musical works, artistic works, sound recordings, cinematograph films, sounds and television broadcasts, program-carrying signals, proprietary works, published editions and computer programs, names, logos, trademarks, images, text, columns, graphics, photographs, illustrations and software;
  - 2.1.2 “**Business Day**” means any day which is not a Saturday, Sunday, or a public holiday;
  - 2.1.3 “**Intellectual Property**” means rights in and in relation to any patent, design, trade mark, trade or business name (including all goodwill associated with any trade mark, or any trade or business name), rights in get-up, copyright (including rights to derivative works), database, domain name, circuit, design, and/or utility model, and including in each case whether registered or unregistered and including all applications (or rights to apply) for, and renewals or extensions of such rights and all similar or equivalent rights or forms of protection which may now or in the future subsist in any part of the world, registered or unregistered;

- 2.1.4 “**Online Profiles**” means Cubisol’s social media and other profiles, (insofar as it may be applicable) including (but not limited to) its Facebook page, LinkedIn account, Twitter feed;
- 2.1.5 “**Owner(s)**” means Cubisol or any third party owner(s), as the case may be, of the Intellectual Property rights in and to the Content;
- 2.1.6 “**Terms and Conditions**” means the terms and conditions applicable to the use of the Website as set out herein, which is constituted of these terms and conditions and the privacy policy attached as **Annexure A**, as amended from time to time;
- 2.1.7 “**Cubisol**” means Cubisol Investments (Pty) Ltd, registration number 2010/006883/07, a private company with limited liability, duly incorporated in accordance with the laws of the Republic of South Africa;
- 2.1.8 “**User(s)**” means any person or entity using the Website; and
- 2.1.9 “**Website**” means the websites owned and maintained by Cubisol, or through which Cubisol makes information relating to its products and services available to Users, including but not limited to the websites located at the domain names [www.thewalk.co.za](http://www.thewalk.co.za); [www.hibiscusmall.co.za](http://www.hibiscusmall.co.za); [www.scottburghmall.com](http://www.scottburghmall.com); [www.mountainviewshoppingcentre.co.za](http://www.mountainviewshoppingcentre.co.za), and any Online Profiles operated by or on behalf of Cubisol in the future, including the Content thereon.
- 2.2 The clause headings in these Terms and Conditions have been inserted for reference purposes only and shall not affect the interpretation of any provision of these Terms and Conditions.
- 2.3 Words and expressions defined in any sub-clause shall, for the purpose of the clause of which the sub-clause forms part, bear the meaning assigned to such words and expressions in that sub-clause.
- 2.4 If any provision in a definition is a substantive provision conferring rights or imposing obligations on any party, effect shall be given to it as if it were a substantive clause in the body of the Terms and Conditions, notwithstanding that it is only contained in this interpretation clause.

- 2.5 If any period is referred to in these Terms and Conditions by way of reference to a number of days, the days shall be reckoned exclusively of the first and inclusively of the last day unless the last day falls on a day which is not a Business Day, in which case the day shall be the next succeeding Business Day.
- 2.6 The rule of construction that the contract shall be interpreted against the party responsible for the drafting or preparation of these Terms and Conditions shall not apply.
- 2.7 These Terms and Conditions shall be governed by and construed and interpreted in accordance with the laws of the Republic of South Africa.
- 2.8 Expressions defined in these Terms and Conditions shall bear the same meanings in any annexure hereto which does not contain its own definitions.

### **3 INTRODUCTION**

This document sets out the Terms and Conditions of Cubisol pertaining to the access and use of the Content, information, products, services, and functions provided on the Website.

### **4 CONDITIONS OF USE**

- 4.1 The User may not use, copy, adapt, redistribute or modify the Content or any part thereof or frame, "mirror", data-mine (by way of but not limited to, robots, crawlers or other similar programs) or cache the Website or reverse engineer, copy, modify, re-distribute, decompile, or create a derivative work of the Website or Cubisol's software, or any part thereof without prior written authorisation from Cubisol.
- 4.2 The User may not assign, transfer or sublicense the rights afforded to the User in terms of these Terms and Conditions, and the User accordingly agrees not to provide access to any other person, or provide his/her account details to any such other person.
- 4.3 The User agrees to treat all Content and information on the Website as confidential, and not to share any such Content or information with any person other than on the Website without the relevant Party's express consent, if applicable.

## **5 CONTENT**

5.1 Cubisol reserves the right to –

5.1.1 refuse services, suspend or terminate a User's access to the Website, and remove or edit the Content at its sole discretion;

5.1.2 claim damages from any User who does not comply with these Terms and Conditions;

5.1.3 make improvements, change, or discontinue, without notice, any aspect or feature of the Website and Content; and

5.1.4 use the services of third parties to provide information on the Website.

## **6 USAGE RESTRICTIONS**

6.1 The User hereby agrees that it will not itself, nor through a third party –

6.1.1 use the Website for any purposes other than in respect of obtaining further information in respect of Cubisol or its affiliates;

6.1.2 use the Website or any of the Content for or in conjunction with any illegal, unlawful, or immoral purpose or as prohibited by the provisions hereof;

6.1.3 use the Website for any purpose other than personal, non-commercial, and information purposes;

6.1.4 engage in any activity intended to entice, solicit or otherwise recruit Users to join an organisation, except where such activities are expressly authorised in writing by Cubisol, or as permitted by law;

6.1.5 take action aimed at deceiving or misleading any person, attempt to impersonate or misrepresent the User's affiliation to any person, or otherwise manipulate or disguise the origin of anything posted or transmitted electronically to Cubisol, whether on or through its Website, or otherwise;

- 6.1.6 engage in any abuse of electronic mail or spamming, including the posting or cross-posting of unsolicited articles with the same or substantially the same message to recipients that did not request to receive such messages;
- 6.1.7 modify, access, or make available any Content stored on or accessed through the Website in a manner other than on the Website;
- 6.1.8 remove any identification, trademark, copyright or other notices from the Website;
- 6.1.9 make available, upload files that contain software of any other material not owned or appropriately licensed by the User;
- 6.1.10 violate the privacy of any person, or attempt to gain unauthorised access to the products and/or services rendered by Cubisol;
- 6.1.11 collect or use any content from the Website for the benefit of a competing merchant;
- 6.1.12 decompile, disassemble, or reverse engineer any portion of the Website;
- 6.1.13 use the Website in a manner that may infringe the Intellectual Property rights or other proprietary rights of others, including the transmission of pirated software;
- 6.1.14 use the Website in any manner which could damage, impair, overburden, or disable the Website or interfere with any User's use or enjoyment of the Website;
- 6.1.15 use the Website to transmit anything which contains viruses or any other destructive features, regardless of whether or not damage is intended;
- 6.1.16 use the Website to post or transmit, anything which is unlawful, defamatory, discriminatory, obscene, offensive, vulgar, threatening, abusive, harassing, harmful, hateful, profane, sexuality explicit, or which carries child pornography, religious or racial slurs, which can be construed as racially, ethnically, or otherwise objectionable in any way, or threatens or encourages bodily harm or the like, or which may violate any person's personality rights;

- 6.1.17 use the Website, icons, site address, or other means to hyperlink other internet sites with any page in the Website;
- 6.1.18 frame, nor use framing technologies to enclose the Website, without the express written consent of Cubisol (and the Owner where applicable);
- 6.1.19 gather electronic mail addresses and/or names for commercial, political, charity or like purposes or collect or attempt to collect personal information about third parties without their knowledge or consent; and
- 6.1.20 act in any way which may, could or does impose an unreasonable or unusually large load of traffic on the Website, or otherwise interferes with its proper and timely functioning.

## **7 LINKED SITES**

- 7.1 The Website may contain links to other websites that are not controlled or maintained by Cubisol.
- 7.2 While Cubisol attempts to include only links to those sites which are in good taste and safe for Users, the User agrees that Cubisol will not be responsible for the content, advertising, privacy policies, products, services, or other materials on or available from such linked websites.
- 7.3 The use of linked websites is at the User's own risk. Cubisol encourages all Users to read the terms of use of such other websites. Any inclusion of such links on Cubisol's Website does however not imply Cubisol's endorsement of the linked site nor the content thereof.
- 7.4 Cubisol reserves the right to disable links from third party sites to Cubisol's Website, and *vice versa*.

## **8 COPYRIGHT AND INTELLECTUAL PROPERTY RIGHTS**

- 8.1 The Content is provided by the Owners.
- 8.2 The Intellectual Property available on the Website or to be made available by Cubisol or any of our selected service providers or agents are the property of or licensed to Cubisol and may not be used other than as set out herein.

- 8.3 Any uploads by the User to the Website will be dealt with as property of the User. The User hereby indemnifies Cubisol against any claim whatsoever for the infringement of Intellectual Property of a third party or breach of any Privacy Policy between the User and any third party as a result of an upload or submission to the Website.
- 8.4 The names, images and logos identifying Cubisol or the products and services of a third party, are the Intellectual Property of the Cubisol and subject to copyright, design right and trademark protection. Unless specifically agreed to under these terms and conditions, nothing contained herein shall be construed as conferring any licence or right to use any Intellectual Property by Cubisol or any other third party.
- 8.5 E-mail addresses, names, telephone numbers and fax numbers published on the Website may not be incorporated into any database used for electronic marketing or similar purposes. The presentation of such details is not permission from Cubisol to utilise same.
- 8.6 Except as specifically provided herein or elsewhere on the Website, no Content may be copied, reproduced, republished, downloaded, posted, transmitted, or distributed in any way, or otherwise used for any purpose, by any person or entity.
- 8.7 No User may add, delete, distort, or otherwise modify the Content. Any unauthorised attempt to modify any Content, to defeat or circumvent Cubisol's security features, or to utilise the Website for any purpose other than its intended purpose is strictly prohibited.

## **9 LIMITATION OF LIABILITY AND DISCLAIMERS**

- 9.1 Cubisol does not warrant that the Website, Content, information, or downloads shall be error-free or that they shall meet any particular criteria, performance, or quality. Cubisol expressly disclaims all implied warranties, including but not limited to, warranties of merchantability, fitness for a particular purpose, non-infringement, compatibility, security, and accuracy.
- 9.2 **Subject to section 43(5) and 43(6) of the Electronic Communications and Transactions Act No. 25 of 2002 ("ECTA"), if applicable, and to the extent**

**permitted by law, the Website, including any current or future offer of products or services, are provided on an “as is” basis, and may include inaccuracies or typographical errors, and Cubisol shall not be held liable for any damage, loss or liability of any nature whatsoever, howsoever caused.**

- 9.3 Cubisol makes no warranties or representations as to the availability, accuracy or completeness of the Website, or any third-party content accessible via a website on the Website.
- 9.4 **Cubisol, its trustees, employees, representatives, or service providers will not be liable for any special, direct, indirect, or consequential damages, expenses, or losses whatsoever, including loss of profits or data, loss of revenue, anticipated savings, goodwill, reputation or any delays, whether in an action in contract or delict, arising out of the use or inability to use the Website or performance of the Website or non-performance of the Website, maintenance, enhancements, events outside its control or *force majeure* events, even if Cubisol has been advised of the possibility of such damages.**
- 9.5 Cubisol does not warrant that it has control over the persons who have access to the Website, nor that any minors will be unable to access the Website or upload or download Content to or from the Website. **The User accordingly indemnifies Cubisol and holds it harmless against any losses, damages, costs, liabilities, and expenses incurred or suffered as a result of any minor gaining access to the Website.**
- 9.6 The User waives and abandons any and all liabilities and claims of any nature whatsoever, howsoever arising, which he might have against Cubisol, and releases Cubisol against any and all liability and claims that may arise or accrue to the User.
- 9.7 The use of the Website is at the User’s sole risk.
- 9.8 The products and services advertised on the Website and other marketing material and documents are to be used as a guideline only, and may be influenced or changed by variable and/or unforeseen factors.

- 9.9 Cubisol shall not be held liable for any errors or omissions in any of its publications and documentations (including any such material, information, publications, and documentation made available in digital or electronic media format).

## **10 NON-ENDORSEMENT**

Reference to any specific company, products, processes, or services by trade name, trademark, manufacturer, or otherwise on the Website does not necessarily constitute or imply its endorsement, recommendation, or favouring by Cubisol.

## **11 PRIVACY, ACCESS TO AND USE OF INFORMATION**

- 11.1 It is possible for internet-based communications to be intercepted. Without the use of encryption, the internet is not a secure medium and privacy cannot be ensured. Internet e-mail is vulnerable to interception and forging.
- 11.2 To ensure acquaintance with and awareness of the privacy measures and policies of Cubisol, the User is urged to read and understand the underlying privacy clauses attached as **Annexure A** to these Terms and Conditions.

## **12 GENERAL**

- 12.1 The Website is controlled, operated and administered by Cubisol from its offices as set out in clause 15.1.4 below.
- 12.2 Cubisol makes no representation that the Website and the Content thereon are appropriate or available for use in other locations or countries. Access to the Website from territories or countries where the Content is illegal is prohibited. If the User accesses the Website from locations outside of the Republic of South Africa, that User is responsible for compliance with all such local laws.

## **13 BREACH & TERMINATION**

Failure to comply with these Terms and Conditions (or the Privacy Policy in **Annexure A** constitutes a material breach upon which the User is permitted to use the Website, and may result in Cubisol taking all or any of the following actions –

- 13.1 immediate, temporary, or permanent withdrawal of the User's right to use the Website;
- 13.2 immediate, temporary, or permanent removal of any Content uploaded by the User to the Website;
- 13.3 issue a warning to the User;
- 13.4 obtain an order against the User for specific performance, with or without claiming damages;
- 13.5 claim such damages as it may have suffered in lieu of specific performance together with all amounts owing under or in terms of this Privacy Policy; and/or
- 13.6 disclosure of such information to law enforcement authorities, as deemed necessary in Cubisol's sole discretion.

#### **14 DISPUTE RESOLUTION**

- 14.1 Cubisol may demand that a dispute be determined in terms of this clause 14 by written notice given to the other party in accordance with the Expedited Rules ("**Rules**") of the Arbitration Foundation of Southern Africa ("**AFSA**").
- 14.2 This clause shall not prevent any party from obtaining interim relief on an urgent basis from a court of competent jurisdiction, pending the decision of an arbitrator.
- 14.3 The User hereby consents to the arbitration being dealt with on an urgent basis in terms of the Rules of AFSA should either party, by written notice, require the arbitration to be held on an urgent basis. In such event either party may apply to the AFSA Secretariat as required in terms of the said Rules to facilitate such urgent arbitration.
- 14.4 The arbitration shall be held –
  - 14.4.1 at Cape Town;
  - 14.4.2 with only the legal and other representatives of the parties to the dispute present thereat; and

- 14.4.3 otherwise in terms of the Arbitration Act, No. 42 of 1965 (“**Arbitration Act**”), unless otherwise provided for herein.
- 14.5 The arbitrator shall be a practising advocate of the Cape Bar of at least ten years’ standing, appointed by Privacy Policy between the parties to the dispute, subject to clause 14.6
- 14.6 Should the parties fail to agree on an arbitrator within 14 days after the giving of notice in terms of clause 14.1, the arbitrator shall be appointed by the chairperson of the cape bar council (or by AFSA if the cape bar council no longer exists), at the request of either party to the dispute.
- 14.7 The parties hereby consent to the jurisdiction of the High Court of South Africa in respect of the proceedings referred to in clause 14.8.
- 14.8 The decision of the arbitrator shall be final and binding on the parties to the dispute and may be made an order of the court referred to in clause 14.7, at the instance of any of the parties to the dispute.
- 14.9 The parties agree to keep the arbitration including the subject matter of the arbitration and the evidence heard during the arbitration confidential and not to disclose it to anyone except for purposes of obtaining an order as contemplated herein.
- 14.10 It is recorded that it is the intention of the parties, that any dispute referred to arbitration in terms of clause 14.1 shall be resolved strictly in accordance with the provisions of this clause 14. The parties accordingly agree and undertake as follows -
- 14.11 that it shall not make any application to Court as contemplated in terms of section 3(2) of the Arbitration Act;
- 14.12 that it shall not make any application to court as contemplated in terms of section 20(1); and
- 14.13 the periods set out in section 23 of the Arbitration Act shall not be applicable to any arbitration proceedings arising out of this Agreement.

- 14.14 The parties hereby consent to the jurisdiction of the High Court of South Africa in respect of the proceedings referred to in clause 14.8.
- 14.15 The decision of the arbitrator shall be final and binding on the parties to the dispute and may be made an order of the court referred to in clause 14.7, at the instance of any of the parties to the dispute.
- 14.16 The parties agree to keep the arbitration including the subject matter of the arbitration and the evidence heard during the arbitration confidential and not to disclose it to anyone except for purposes of obtaining an order as contemplated herein.
- 14.17 It is recorded that it is the intention of the parties, that any dispute referred to arbitration in terms of clause 14.1 shall be resolved strictly in accordance with the provisions of this clause 14. The parties accordingly agree and undertake as follows -
- 14.17.1 that it shall not make any application to Court as contemplated in terms of section 3(2) of the Arbitration Act;
- 14.17.2 that it shall not make any application to court as contemplated in terms of section 20(1); and
- 14.17.3 the periods set out in section 23 of the Arbitration Act shall not be applicable to any arbitration proceedings arising out of this Agreement.

## **15 ECTA REQUIREMENTS**

- 15.1 In accordance with the disclosure requirements of ECTA and the Promotion of Access to Information Act No.2 of 2000, Cubisol makes the following information available to the User -
- 15.1.1 **Full name:** Cubisol Investments (Pty) Ltd
- 15.1.2 **Legal status:** private company
- 15.1.3 **Registration number:** 2010/006883/07

- 15.1.4           **Physical Address:** SG101A South Wing, Great Westerford, 240 Main Road, Newlands, Western Cape, 7700
- 15.1.5           **Website Addresses:** [www.thewalk.co.za](http://www.thewalk.co.za); [www.hibiscusmall.co.za](http://www.hibiscusmall.co.za); [www.scottburghmall.com](http://www.scottburghmall.com); [www.mountainviewshoppingcentre.co.za](http://www.mountainviewshoppingcentre.co.za)
- 15.1.6           **Telephone number:** 021 659 7070
- 15.1.7           **Email address:** info@cubisol.co.za
- 15.1.8           **Names of Directors:**
- 15.1.8.1                 André von Bülow;
- 15.1.8.2                 Gerald Porter.
- 15.1.9           **Place of registration:** South Africa
- 15.1.10           **Physical address where Cubisol will receive legal service of documents:** SG101A South Wing, Great Westerford, 240 Main Road, Newlands, Western Cape, 7700
- 15.1.11           **Description of the main characteristics of the goods or services offered by Cubisol:** Retail property investments.

## **16 AMENDMENT OF THE TERMS AND CONDITIONS**

- 16.1           The Owner reserves the right to, at its sole discretion, amend, modify, add to or remove any provisions (in whole or in part) of the Terms and Conditions from time to time.
- 16.2           Any changes to these Terms and Conditions will become effective upon such changes being posted on the Website.
- 16.3           The onus rests on the User to periodically check the Terms and Conditions on the Website for any changes or updates therein contained.
- 16.4           The User's continued use of the Website following the posting of any amendments by Cubisol shall be considered notice of the User's acceptance to

abide by, and be bound by the Terms and Conditions, including any amendments hereto.

**We recommend that the user prints out a copy of these terms and conditions for future reference.**