



Terms and Conditions

INTRODUCTION

1.1. Website Terms and Conditions of Use Relating to the website provided by Phoenix Direct Marketing Pty Ltd (Registration Number: 2019/311762/07) (“the Provider”), as well as its website located at the following URL <https://www.phoenix-dm.co.za/> (“the Website”). These Terms and Conditions (“the Terms and Conditions”) govern your (“the User’s”) use of the Provider’s Website and the Services associated therewith. By accessing and using, and in particular indicating your acceptance of the terms by clicking on the **“I accept these terms”** button as provided for on the Website, the User agrees to be bound by the Terms and Conditions set out in this document. The content of this Website is proprietary to the Provider and / or otherwise utilized in terms of a written license agreement entered into between the Provider and the proprietor of such content. As such, the User may not access, display, use, download, and/or otherwise copy or distribute content obtained on the Website for any purposes other than as provided for in these Terms and Conditions without the prior consent of the Provider.

1.2. In terms of section 49 of the Consumer Protection Act, 2008 your attention is drawn to the provisions of clauses 2,4,7,8,10 and 13 which:

limit in any way the risk or liability of the Provider or any other person;

constitute an assumption of risk or liability by the User;

impose an obligation on the User to indemnify the Provider or any other person for any cause; or

constitute an acknowledgement of any fact by the User.

CONTRACTUAL CAPACITY TO ACT

The User warrants that he / she is at least 18 (eighteen) years of age and has the necessary contractual and mental capacity to enter into and be bound by these Terms and Conditions. Where the User acts on behalf of a juristic person, the User agrees to bind himself / herself as surety and co-principal debtor with such juristic person for the due performance of the juristic person’s obligations in terms of these Terms and Conditions. Notwithstanding the foregoing, the User (where he/she acts on behalf of a juristic person) warrants that he / she has the necessary authority and capacity to enter and bind the juristic person to these Terms and Conditions.

ELECTRONIC COMMUNICATIONS

By using this Website or communicating with the Provider by electronic means, the User consents and acknowledges that any and all agreements, notices, disclosures, or any other communication shall have been adequately addressed to the User upon transmission by e-mail to the e-mail address provided by the User and it constitutes proper notice to the User.

SERVICES PROVIDED AND YOUR ACCOUNT

The Website offers various services, including, but without limitation, the provision of strategic marketing services to direct marketing companies (“the Services”). Under certain circumstances, the Provider may also



afford the User an opportunity to conclude commercial transactions with various third parties who use the Website. The use of any product or service bought or subscribed for through the use of the Website, is at the User's own risk.

If a User uses the Website the User is obliged to keep his/her access details (including, his/her username and password) confidential and not allow other people to use it. The User also accepts full responsibility for all activities that occur under their unique access details or password and accept responsibility for sharing his/her username and password. The User is only permitted to use one account in respect of the Website.

If the User uses more than one account, the Provider reserves the right to revoke all access to the Website. Once a User has logged onto the Website, certain information, functionalities and other features of the Website will be accessible to the User the next time the User visits the Websites without having to re-enter their password. If the User prefers to enter their password every time they access the Website, such change can be made via the settings and functionality available on the Website.

The User expressly acknowledges and agrees that the following actions shall be material breaches of these Terms and Conditions:

signing in as, or pretending to be, another person;

transmitting material that violates, or could violate, the intellectual property rights of others or the privacy of others;

using the Services in a way that is intended to harm, or could result in harm, to the User or to other users of the Website; or

gathering information and specifically Personal Information about others without obtaining their prior written consent.

The User also expressly agrees that that any use of his/her access details shall be regarded by the Provider as if the User were the person using such information in all instances.

The User may change his/her username and password at any time, although the Provider may determine certain requirements that the User will need to meet when choosing a username or password. These requirements may be changed from time to time, and the User may be required to update his/her credentials following such changes.

PERSONAL INFORMATION

5.1. The User shall make available and consents to the processing of the following personal information by the Provider:

e-mail address;

name and surname;

name of company/organisation;

registration number;



identity number;

physical address;

IP address;

delivery address;

telephone number; and

opinions and preferences.

(“the Personal Information”)

5.2 The User agrees that the Provider may process the User’s Personal Information for all purposes that relate to the Website and the Services offered through the Website. In order to do so, the User acknowledges that the Provider is required to find out exactly what the User needs or wants.

5.3 The User does have the right to object to the processing of their Personal Information and it is voluntary to accept these Terms and Conditions. However, the Provider does require the User’s acceptance to enable the User to use the Website, and to provide the Services, which may include as activating and servicing the User’s policy and benefits, where applicable.

5.4 Personal Information will be processed by the Provider, pursuant to and for the purposes as set forth in the Provider’s Privacy Policy, which may include, but not be limited to the following purposes:

verifying the identity of the User;

transmitting and receiving necessary correspondence to the User in relation to the Services or the products or services accessed, used or purchased by the User through, or by means of the Website;

facilitating delivery of the Services or the products or services accessed, used or purchased by, or subscribed to by, the User through, or by means of the Website;

generally rendering the Services;

processing payments, refunds and the like in respect of any of the Services or the products or services accessed, used or purchased by the User through, or by means of the Website;

transmitting marketing material to the User in respect of the Services made available by the Provider or any third party;

to monitor and analyse the User’s conduct in respect of the Services;

for compliance and risk purposes;

to analyse the Personal Information collected for research and statistical purposes and once such Personal Information is analysed to send the User marketing and promotional material which the Provider believes may,



based on the Provider's processing of the User's Personal Information, be relevant to the User and enhance the User's use of the Services provided on, through, or by means of the Website;

to conduct market research, as well as academic research in respect of the Personal Information in order to identify potential markets and trends, to develop new products and services and to improve the nature of the Services being provided to the User by the Provider;

to aggregate and/or de-identify the User's Personal Information after analysing it for statistical purposes and/or conducting market and academic research in respect thereof, as aforesaid, and transferring or on-selling such de-identified Personal Information to third parties for commercial or non-commercial means.

5.5 The User's Personal Information shall be retained in the strictest confidence by the Provider and will only be processed in accordance with the Provider's Privacy Policy to which these Terms and Conditions relate, which Privacy Policy can be sourced at <https://www.phoenix-dm.co.za/>

5.6 The User expressly agrees and acknowledges that any failure by the User to submit the requisite Personal Information may render the Provider unable to deliver the Services and should this arise, the User hereby indemnifies and holds the Provider harmless against any loss or damage which the User may suffer as a result of the Provider's inability to render or deliver the Services.

5.7 The User acknowledges that through the use of the Website or the Services, which may include completing online application forms or contacting the Provider electronically, the Provider will in effect be processing the User's Personal Information.

5.8 The User acknowledges that he/she understands that (where applicable) when the User includes the Personal Information of their spouse and dependents on the Website, the Provider will process such Personal Information in line with not only these Terms and Conditions, but the provisions of the Provider's Privacy Policy sourced at <https://www.phoenix-dm.co.za/>

5.9 In such an event contemplated in clause 5.8 above, the User warrants that they have the required consent to furnish the Provider with such Personal Information.

SECURITY SAFEGUARDS

6.1 The Provider shall take appropriate, reasonable technical and organisational measures to secure the integrity and confidentiality of the Personal Information in its possession, in order to guard against:

loss of, damage to or unauthorised destruction of Personal Information; and

unlawful access to or processing of Personal Information.

The Provider shall not however be held responsible and the User agrees to indemnify and hold harmless the Provider for any security breaches occurring on the User's electronic device (personal computer or other electronic device used to browse the Website or access the Services), which may arise as a result (without limitation) of the lack of adequate virus protection software or spyware that the User may inadvertently have installed on his/her device.

The Provider undertakes to process any of the User's Personal Information in accordance with the provisions of the Provider's Privacy Policy to which these Terms and Conditions relate, which Privacy Policy can be sourced



at <https://www.phoenix-dm.co.za/>

THIRD PARTY PRODUCTS AND SERVICES

7.1. At the Provider's discretion, it may include references to or facilitate access to products offered or services rendered by third parties and provide links to the sites of third parties. These third-party service providers and their sites have separate and independent terms and conditions and privacy policies applicable to their products, services and respective sites. The Provider shall bear no responsibility or liability for the products offered or services rendered by such third parties or the content and services provided through or by means of their respective websites.

The Provider makes no warranties or representations whatsoever regarding the products offered or services rendered by any third party or the content or activities of such third party websites, which may be accessed or used through or by means of the Provider's Website and/or its associated Services.

The User acknowledges that the Provider merely facilitates the User's access to such third party's products, services and/or website and does not itself offer the products or render the services of such third party to the User.

The User acknowledges that neither the Provider, nor its directors, prescribed officers, board of trustees, agents or assigns, shall be held responsible for any direct or indirect special, consequential or other damage of any kind whatsoever suffered or incurred, related to the use of, or the inability to access or use the content of or the website of a third party, as well as any functionality of said website and the products offered or services rendered through or by means of said website, or of any linked website, even if Provider is expressly advised thereof.

THE USE OF THE WEBSITE BY AN AFFILIATE

By accessing and making use of the Website in the capacity as an affiliate of Phoenix DM, such User acknowledges and agrees that he/she may gain access to the Personal Information of third parties (clients and employees).

In respect of a situation contemplated in clause 8.1 above, such User acknowledges and agrees to only process the Personal Information in the accordance with the Provider's Privacy Policy, as if the provisions of such Privacy Policy are expressly incorporated herein, which Privacy Policy can be sourced at <https://www.phoenix-dm.co.za/>

UPDATING OF THESE TERMS AND CONDITIONS

The Provider reserves the rights to change, modify, add or remove from portions or the whole of these Terms and Conditions from time to time. Changes to these Terms and Conditions will become effective upon such changes being posted to this Website. It is the User's obligation to periodically check these Terms and Conditions on the Website for changes or updates. The User's continued use of this Website following the posting of changes or updates will be considered notice of the User's acceptance to abide by and be bound by these Terms and Conditions, including such changes or updates.

LIMITATION OF LIABILITY

The User expressly acknowledges and agrees that the rules governing the Provider shall at all times be



applicable to the Services.

The Website and all content on 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. The Provider makes no warranty or representation as to the availability, accuracy or completeness of the content. Neither the Provider, its directors, members, prescribed officers, agents or assigns, shall be held responsible for any direct or indirect special, consequential or other damage of any kind whatsoever suffered or incurred, related to the use of, or the inability to access or use the content or the Website or any functionality thereof, or of any linked website, even if Provider is expressly advised thereof.

Neither the User or any other person shall have any claim against the Provider for any direct, consequential, incidental, indirect or special loss or damages, including, without limitation, business interruption, loss of business information, loss of data or other pecuniary loss, arising from the unavailability of the Services, regardless of whether such claim is based on breach of contract, delict, breach of implied warranties or otherwise and even if the possibility of such loss or damages could have been foreseen or if the Provider was negligent.

The Provider therefore does not guarantee that (i) the Website; (ii) the information, content, tools or materials included on the Website; (iii) the Provider’s servers; or (iv) that any electronic communications sent by the Provider will be free from viruses or other harmful components. The Provider will not be liable for any damages of any kind arising from your use of the Website, the Services or from any information, content, tools or materials included on or otherwise made available to the User through the Website, including for direct, incidental, punitive and/or consequential damages.

Although the Provider is committed to providing Users with the best possible Service, the Provider shall not be responsible for:

any of the events described in this clause 10;

any actions or omissions by the User that result in a breach of the provisions of these Terms and Conditions;

any links to other websites from the Website. The User also acknowledges that the Provider cannot control the content of or the products offered on any third party websites;

a denial of access to the Website or the Services, should the Provider believe or have reason to believe that the User is conducting activities that are illegal, abusive, would attack the integrity of the Website or put the Provider in disrepute; or

the User’s reliance on any of the Services, information, content, tools or materials that the User obtains or gains access to from the Website.

CASUAL SURFING

The User may visit the Website without providing any personal information. The Website servers will in such instances collect the IP address of the User’s computer or other electronic device, but not the e-mail address or any other distinguishing information. This information is aggregated to measure the number of visits, average time spent on the Website, pages viewed, etc. The Provider uses this information to determine use of the Website, and to improve content thereon. The Provider assumes no obligation to protect this information and may process such information without limitation.



GOVERNING LAW

The Website is controlled, operated and administered by the Provider within the Republic of South Africa. Access to the Website from territories or countries where the use of the Services provided through the Website is illegal, is prohibited. The User may not use the Website in violation of South African export laws and regulations. If the User accesses this Website from locations outside of South Africa, that User is responsible for compliance with all local laws. These Terms and Conditions shall be governed by the laws of the Republic of South Africa, and the User consents to the jurisdiction of the any High Court with jurisdiction for purposes of resolving any dispute in connection with the use of this Website. If any of the provisions of these Terms and Conditions are found by a court of competent jurisdiction to be invalid or unenforceable, that provision shall be enforced to the maximum extent permissible so as to give effect to the intent of these Terms and Conditions, and the remainder of these Terms and Conditions shall continue in full force and effect. These Terms and Conditions constitute the entire agreement between the Provider and the User with regard to the use of the Services, information, content, tools and, or materials made available to the User through the Website.

USE OF THE WEBSITE AND THE SERVICES

13.1 The User agrees not to:

- i) use the Website or the Services to process Personal Information of third parties;
- ii) violate the privacy of any person in order to, or attempt to, gain unauthorised access to the Website or the Services, including, but without limitation through hacking, password mining or any other means; or
- iii) use the Website or the Services to engage in any illegal or unlawful activity.

Should the User engage in any of the aforementioned activities, or breach any of the provisions of these Terms and Conditions, the Provider shall be entitled, without prejudice to any other rights it may have and without prior notice to the User:

suspend the User's access to the Website and/or the Services; and/or

terminate this agreement and recover all costs incurred by the Provider, including, but without limitation, legal costs on an attorney and own client basis.

COPYRIGHT

All content made available on the Website (for example, text, graphics, logos, button icons, images, audio clips, digital downloads, data compilations, and where applicable software) belongs to the Provider, or is alternatively used pursuant to a licensing agreement concluded between the Provider and the third party proprietor of such content.

Any unauthorised use, alteration or dissemination of the information or content published on the Website is strictly prohibited.

The User expressly acknowledges that no content or information displayed on the Website may be regarded or construed as granting any licence or right to any third party, including the User, to use any trademark without the Provider's prior written consent and approval.



Although the Provider has deployed reasonable technical and organisational measures to protect the information on the Website from time to time, the User acknowledges that the Provider cannot be held responsible for any consequences that may result from the unlawful breach of copyright or unlawful dissemination of information by third parties copying information off of the Website.

COMPLIANCE WITH SECTION 43 OF THE ELECTRONIC COMMUNICATIONS AND TRANSACTIONS ACT, 2002

15.1 In compliance with section 43 of the Electronic Communications and Transactions Act, 2002, the Provider draws your attention to the following information relating to it:

Full name and legal status:

Phoenix Direct Marketing Pty Ltd (Registration Number: 2019/311762/07)

Physical address and telephone number:

No 36 Emily Hobhouse street, Parow North, Cape Town 7500

Tel: +27 (10) 056-1559

Website address and e-mail address:

<https://www.phoenix-dm.co.za/>

E-mail: rodwin@phoenix-dm.co.za

The registration number, the names of its office bearers and its place of registration:

(Registration Number: 2019/311762/07)

Mr Rodwin Goldstone

The physical address where the Provider will receive legal service of documents:

No 36 Emily Hobhouse street, Parow North, Cape Town 7500

A sufficient description of the main characteristics of the Services offered by the Provider:

The Provider is close corporation registered in terms of the company laws of the Republic of South Africa, and conducts the business of a strategic marketing services provider to direct marketing companies. The Website is deployed by the Provider to offer various services, including, but without limitation, the provision of consumer information, products, services, promotional material, commercial, consumer, industry specific content and information services, as well as providing the interface between the Provider and the User in order to enable or afford the User to access such relevant products, services, content, tools or materials being offered, marketed, sold to, or subscribed to by, the User through or by means of the Website ("the Services").

The security procedures and privacy policy of the Provider in respect of processing personal information:



PHOENIX DIRECT MARKETING

All Personal Information processed by the Provider in accordance with the provisions of the Provider's Privacy Policy sourced on its Website at <https://www.phoenix-dm.co.za/>