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The Vrystaat Arts Festival Market Terms & Conditions

These are the terms and conditions pertaining to the Vrystaat Arts Festival and pertain to any and all use of any physical stalls as well as pages hosted on said domain as well as any actions and transaction.

The term of these Terms & Conditions runs for the entirety of the use of the Market and matters ancillary thereto

1. PART 1: DEFINITIONS

- 1.1. **"Agreement"** means these terms and conditions which may be changed from time to time upon notice through the aforementioned domain as well as associated contractual agreements engaged with the Vrystaat Arts Festival;
- 1.2. **"Vrystaat Arts Festival"** means the Vrystaat Arts Festival, a duly registered organisation under the laws of South Africa with its incorporation number being [CIPC/NPO number];
- 1.3. **"Intellectual Property Rights"** means all intellectual property regardless of the source of their protection and the nature thereof, anywhere in the world;
- 1.4. **"Market"** means the entire Vrystaat Arts Festival market whether it be online on physical;
- 1.5. **"Personal information" or "Your information"** means "Personal information", "your information" or "information" are used interchangeably in this Agreement and all mean any and all information you provide to us in using the Market insofar as required for the purpose of the Market and as protected by the Protection of Personal Information Act, 4 of 2013;
- 1.6. **"Merchant" means a person** (including juristic persons) who has been allowed to make offers of sales during the course of the Market;
- 1.7. **"Services"** means the online sales by which a person, firm or company may sell or buy goods or services at the Market;
- 1.8. **"Transactors"** means any buyer or seller, or someone (including juristic persons) who is otherwise making use of the Market;
- 1.9. **"VAT"** means any value added tax, or other consumption tax;

2. PART 2: LISTING



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- 2.1. The Vrystaat Arts Festival is not responsible for any products and/or services offered through the Market, be it for, *inter alia*, defectiveness, misleading information, injury and/or any further matter of damage.
- 2.2. The Vrystaat Arts Festival may reject or otherwise prevent a vendor from making offers and/or sales at the Market for whatever reason the Vrystaat Arts Festival may deem fit in terms of its mission and values.
- 2.3. Though the Vrystaat Arts Festival may reject or otherwise prevent a vendor from making offers and/or sales, it is specifically stated that the allowance of said offers and/or sales is not an endorsement of the product/service by the Vrystaat Arts Festival.
- 2.4. Transactors acknowledge that any transactions between them bind them to one another and the Vrystaat Arts Festival is in no way bound to a buyer – seller agreement.
- 2.5. The Vrystaat Arts Festival may charge fees and/or commission on each transaction as per the individual agreements with each Merchant which will be charged to the Merchant.
- 2.6. The Merchant is not allowed to display prices which require further calculation unless that further calculation equates to a discounted price. The Merchant is therefore not allowed to display a price that:
 - 2.6.1. Requires the addition of VAT; and/or
 - 2.6.2. Requires the addition of costs;
- 2.7. A delivery cost may be displayed separately.

3. PART 3: POSITIONING

- 3.1. The Vrystaat Arts Festival does not -
 - 3.1.1. purport to be a representative agent of any of the Merchants;
 - 3.1.2. hold itself liable for any warranties offered by any of the Merchants;
 - 3.1.3. warrant the legality of any aspects of the Services provided though a thorough vetting process is established;
 - 3.1.4. guarantee any outcomes;
 - 3.1.5. guarantee any right of return;
 - 3.1.6. hold itself to offer any unreasonable interpretation of the description of any of the Services;
 - 3.1.7. represent that it holds any commitment to engage in feedback though a feedback system may be in place;
 - 3.1.8. represent that it arranges and manages any form of physical delivery;
 - 3.1.9. act as an arbitrator in a dispute between any transaction at the Market save for instances where it expressly elects to do so;
 - 3.1.9.1. Any election to act as an arbitrator shall set no precedent nor any obligation to do so in future;



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- 3.1.10. confirm any detail pertaining to credit transaction on its platform including, but not limited to, credit limits;
 - 3.1.11. confirm the validity of any person's right to make use of a payment method/channel;
 - 3.1.12. transfer any information other than that which is deemed necessary to conclude the purposes of the Market; and
 - 3.1.13. maintain any form of responsibility for any Transactors to abide by relevant legislation and/or other legalities.
- 3.2. The Market will -
- 3.2.1. provide Merchants with a stall, for the purposes of offering goods and services for sale, which will remain the property of the Market.
 - 3.2.2. reserve the right to order a Merchant to issue a refund if it so deems it appropriate to do so.

4. PART 4: Market Expectations

- 4.1. Vrystaat Arts Festival agrees to -
 - 4.1.1. Maintain accurate information as far as reasonably possible;
 - 4.1.2. Avoid breach of any intellectual property of the Merchants and/or third parties;
- 4.2. Merchant represents that the relevant goods and services offered at the Market –
 - 4.2.1. are reasonably fit for the purpose or purposes for which goods of that kind are commonly bought as it is reasonable to expect;
 - 4.2.2. correspond with any description that is displayed or otherwise stated;
 - 4.2.3. are not defective;
 - 4.2.4. are free of any external charge or other legal encumbrance such that a buyer will be able to enjoy unencumbered use of those goods and/or services; and
 - 4.2.5. will be offered for sale, and sold, in compliance with the laws of the Republic of South Africa and with particular mention, but not to the exclusion of others, of the Consumer Protection Act, 68 of 2008 and Protection of Personal Information Act, 4 of 2013;
- 4.3. The Vrystaat Arts Festival reserves the right in its sole discretion to alter or remove any information or order the withdrawal of any goods or services offered for sale.
- 4.4. The Vrystaat Arts Festival reserves the right to terminate access to the Market for any reasonable reason including, but not limited to, breach of the Agreement and/or breach of payment obligations.

5. PART 5: Merchants

- 5.1. Merchants are solely responsible for all service, telephony, data charges and/or other fees and costs associated with your access to and use of the Market, as well as for obtaining and maintaining all telephone, computer hardware, and other equipment required for such access and use.
- 5.2. The Market may elect, on request, to provide a Merchant with electricity which may carry an additional cost to the Merchant.
- 5.3. Any access details provided to the Merchant will be the responsibility of the Merchant and there will be a rebuttable presumption that any access to the Market or facilities thereof by means of keys and/or access codes entrusted to a Merchant was access gained by the Merchant themselves.



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- 5.4. Transactors agree and warrant to the Market and, by extension, the Vrystaat Arts Festival that -
 - 5.4.1. they have the legal capacity to purchase any services purchased and, will not otherwise be breaching any law in purchasing those services;
 - 5.4.2. use of any payment instrument by the Transactor warrants their authority and capacity to use that payment instrument;
 - 5.4.3. the purchase of any services at the Market is absolutely at their own risk
 - 5.4.4. the information offered is -
 - 5.4.4.1. accurate, made in compliance of all applicable laws and government regulations and up to date; and
 - 5.4.4.2. is not false, misleading, deceptive, fraudulent, in breach of any person's intellectual property rights, forged, threatening, offensive, containing of confidential information or defamatory.

6. PART 6: RATINGS AND FEEDBACK

- 6.1. Insofar as a ratings system is applicable, it may not be abused or otherwise deliberately manipulated by any Transactor to the unfair detriment of another and/or the Market.
- 6.2. The ratings system is applicable for use only by Transactors who were engaged in an agreement of sale or service insofar as that transaction pertains to the reviewer/reviewee in question.

7. PART 7: GENERAL

- 7.1. These terms may be altered at any time and such posting of the altered version on the Market website will constitute notice of same.
- 7.2. Any breach of this Agreement should be promptly notified.

8. PART 8: ELECTRONIC ABUSE

- 8.1. It is prohibited to
 - 8.1.1. illegally copy, store, use, alter, modify, impair, interfere with or attempt to interfere with, or distribute software or other data;
 - 8.1.2. alter, damage, destroy, erase, interfere with or attempt to interfere with, or infect our files, data and other computer systems and network resources or those of other Transactors or any other person, or access, copy, modify, remove or impair the reliability, security or operation of, any data or files or other information stored in these systems or network resources;
 - 8.1.3. impair the electronic communications to or from, or interfere with or obstruct the lawful use of, or otherwise cause any unauthorised computer functions to our computer systems or those of other users or any other person;
 - 8.1.4. engage in any practice or conduct that is unlawful under any laws applicable to you;
 - 8.1.5. copy, modify, or distribute rights or content from other Merchants, services or tools or the Vrystaat Arts Festival copyrights and trademarks;
 - 8.1.6. harvest or otherwise collect information about users (including email addresses), trades listed or sales activities conducted on the Platform without the express written permission to do so;
 - 8.1.7. mislead others;
 - 8.1.8. engage in spamming, indiscriminate advertising and/or unsolicited commercial email;



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- 8.1.9. operate or utilise a web site or email link to web sites that contain or promote any of the following types of content: libellous, defamatory, obscene, pornographic, abusive, violent, bigoted, hate-oriented, illegal, cracking, hacking or warez, or that offer any illegal goods or services, or link to a web site(s) that do so; and

9. PART 9: SURVIVAL

All provisions relating to proprietary rights, payment of fees, confidentiality, disclaimer of warranty, indemnification, and limitation of liability, shall survive the expiration or earlier termination of these Terms.

10. PART 10: PRIVACY POLICY

- 10.1. The Information Officer is [name] and can be contacted on [email]
- 10.2. Information we collect and host –
- 10.2.1. Account information based on profiles;
 - 10.2.2. Details pertaining to contact information regarding the proposed stall;
 - 10.2.3. Details pertaining to the company information regarding the proposed stall;
 - 10.2.4. Feedback from Market attendees relating to the Market generally and particular stalls;
 - 10.2.5. All associated aspects detailed in the application to offer goods and/or services at the Market;
 - 10.2.6. Lists of products and services;
 - 10.2.7. Review information;
 - 10.2.8. Financial information required for payment of services; and
 - 10.2.9. Consolidated information legally obtained from third parties.
- 10.3. To provide services, Vrystaat Arts Festival may use the information we collect and host for the following general purposes:
- 10.3.1. to provide customer services, including to create and manage the Market;
 - 10.3.2. to customize offers and experiences, including advertising on our properties or third parties' properties;
 - 10.3.3. to contact our Merchants and buyers, including for service matters, customer care or permitted marketing communications via any available communications channels;
 - 10.3.4. to undertake research initiatives and to perform analytics to improve our services; and
 - 10.3.5. to enforce these Terms including to combat fraud and abuse.
- 10.4. No information is shared to non-affiliate third parties without the express permission of the relevant data subject.
- 10.5. No information is rented/sold to third parties without the express permission of the relevant data subject.
- 10.6. We may share certain non-personalized information (data that does not identify our users individually) with third-party service providers, trusted partners or approved researchers in order to better understand the market environment.



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10.7. Lawful Processing

- 10.7.1. Merchants may amend, access and delete all the data kept on them at any given time save for that which is legally required to be maintained by legislation which too shall be deleted upon expiration of term following the deletion of the data.
- 10.7.2. All processing of personal information by the Vrystaat Arts Festival will be conducted by means of the principles of Accountability, Processing limitation, Purpose specification, Further processing limitation, Information quality, Openness, Security safeguards and Data subject participation as envisioned by Section 4(1) of the Protection of Personal Information Act, 4 of 2013 (the "Act") and subsequent related provisions.
- 10.7.3. With regard to the limitation on processing of information of children in terms of section 4(4) of the Act which theme is repeated in section 34, it is expressly read with subsection 4(4)(a) together with section 35(1) and with specific reference to:
 - 10.7.3.1. Subsection 35(1)(a) which compels the Vrystaat Arts Festival to require competent guardians to authorise the processing of their respective childrens' information through a form issued by the Vrystaat Arts Festival; and/or
 - 10.7.3.2. Subsection 35(1)(b) which affords the Vrystaat Arts Festival the ability and legitimate powers to process information to fulfil its duty to care for children in terms of its function and the best interests of the child.

10.8. Rights and Notification

- 10.8.1. Any person who presents information to the Vrystaat Arts Festival for the purposes of the proper functioning of the Market does so under the ambit of this policy.
- 10.8.2. Any reference made to the POPI Policy shall refer to this policy (as updated from time to time as noted above).

10.9. Processing

- 10.9.1. Unless expressly stated and/or consented to, no personal information shall be forwarded to third parties unless
 - 10.9.1.1. In the determination of the Information Officer or their designated appointee, such information is urgently required to afford reasonable and proper:
 - 10.9.1.1.1. Care
 - 10.9.1.1.2. Caution
 - 10.9.1.1.3. Health; and/or
 - 10.9.1.1.4. Education
- services to a person in the care of the Vrystaat Arts Festival



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- 10.9.2. In the instance that any information is processed in terms of 10.9.1, the Information Officer shall promptly inform the relevant party or parties regarding the extent to which their personal information was processed.
- 10.9.3. Information required by order of a competent Court or similar legal entity shall be processed in terms of the compelling order/directive.
- 10.9.4. Information will be processed in terms of the doctrine of minimality insofar as information shall only be processed to the extent required for the purpose of such processing.
- 10.9.5. Information collected regarding a child from a guardian or somebody with competent rights and obligations of care for the child shall be considered to be exempt from the requirement of direct collection by way of section 12(2)(a) of the Act.

10.10. Purpose and Retention

- 10.10.1. Information gathered will be for the purposes of running the Market of the Vrystaat Arts Festival in accordance with legislative and policy regulations.
- 10.10.2. Without denigrating from the generality of the aforementioned, the purposes for which information will be collected include but are not limited to:
 - 10.10.2.1. Providing people with an effective Market;
 - 10.10.2.2. Informing guardians of information relating to matters pertaining to their respective child and/or the Vrystaat Arts Festival;
 - 10.10.2.3. Affording the Vrystaat Arts Festival all information required in order to make prompt decisions in matters of a medical or other emergency; and
 - 10.10.2.4. Promoting the safety, security and best interests of any children entrusted into the Vrystaat Arts Festival's care.
- 10.10.3. Unless randomised and kept for purposes of historical, research and/or statistical purposes, all data records pertaining to a data subject must be destroyed within five years of the relevant Merchant withdrawing from the Market.
- 10.10.4. Any intentional destruction of personal data must be executed in such a manner that it cannot reasonably be reconstructed.

10.11. Openness

- 10.11.1. When collecting personal information, the Vrystaat Arts Festival is to ensure that the data subject or their guardian (whichever is the appropriate case), is aware of
 - 10.11.1.1. The information being collected and where any information that is not directly sourced, is sourced from;



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- 10.11.1.2. The name and address of the Vrystaat Arts Festival and relevant Information Officer;
 - 10.11.1.3. The purpose for which the information is collected;
 - 10.11.1.4. Whether or not the information being supplied is mandatory or voluntary;
 - 10.11.1.5. The consequences of failure to provide any relevant information;
 - 10.11.1.6. Any law authorising or requiring the collection of information; and
 - 10.11.1.7. Instances where the Vrystaat Arts Festival intends to deliver information to third parties.
- 10.11.2. Insofar as the Vrystaat Arts Festival does not comply with the requirements set out in 10.11.1 above, it will be rebuttably presumed that such non-compliance is in accordance with Sections 18(4)(a), (b) and (d) of the Act.

10.12. Security

- 10.12.1. Physically gathered information will be stored in a locked safe to which the Information Officer, or their appointee shall have care of the key.
- 10.12.2. Electronically gathered information will be stored on a password protected server, the password of which will be known by the Information Officer and/or their appointee(s).
- 10.12.3. In any instance where the Information Officer appoints a party to oversee particular information, it will remain the duty of the Information Officer to ensure care of the safety and security of the data.
- 10.12.4. The Information Officer will annually conduct a review of their security to determine foreseeable internal and external risks to the information in the Vryfee's possession and
 - 10.12.4.1. Update this Policy to maintain appropriate safeguards for the risks identified;
 - 10.12.4.2. Regularly verify the safeguards to be effective; and
 - 10.12.4.3. Ensure that safeguards are continually updated to measure against potential risk and other deficiencies.
- 10.12.5. Upon the compromise of any security of any information, the Information Officer will immediately, unless otherwise required by a competent body/investigator:
 - 10.12.5.1. Inform the governmental regulator; and
 - 10.12.5.2. Relevant individuals whose data security has been compromised and to which extent.

10.13. Confirmation and Correction

- 10.13.1. Any data subject, actual or potential, shall have the right, upon requesting a meeting with the Information Officer, to determine whether the Vrystaat Arts Festival holds any information of theirs and to which extent.



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- 10.13.2. A data subject may request the correction and/or updating of any false/outdated information.
- 10.13.3. The Information Officer is obligated to prevent additional data which is not relevant to a particular data subject from being included in any request for information.
- 10.14. Special Information
 - 10.14.1. The collection of any special information as contemplated in section 26 of the Act must be done appropriately and with specific purpose.
 - 10.14.2. The Vrystaat Arts Festival shall seek consent of collection of any special information but in instances where such consent is not sought and/or granted, it will be rebuttably presumed that the processing of such information shall be done for the exercise, establishment or defence of a right or obligation in law.
 - 10.14.3. The Vrystaat Arts Festival is obligated to be mindful of the special information of each person and the Information Officer is compelled to instruct the team to engage in a manner that is respectful of each person's special information but does not isolate any individual.

11. PART 11: REFUND POLICY

- 11.1. Should a person engaged in the services of the Vrystaat Arts Festival not be satisfied with the services of a Merchant, they may make a submission to the Vrystaat Arts Festival as to their respective issues.
- 11.2. The Vrystaat Arts Festival will indicate the complaint to the relevant Merchant.
- 11.3. The Vrystaat Arts Festival, though it may order a refund or any alternative/further recourse, is under no obligation to issue any recourse.
- 11.4. Recourse offered will not be precedent setting to any other user in an identical or similar position.

Effective date: 01 December 2021