

## WEBSITE TERMS AND CONDITIONS

IN TERMS OF SECTION 11 OF THE ELECTRONIC COMMUNICATIONS AND TRANSACTIONS (ECT) ACT 25 OF 2002 AND THE COMMON LAW OF CONTRACT, THESE TERMS AND CONDITIONS ARE VALID, BINDING, AND ENFORCEABLE AGAINST ALL PERSONS THAT ACCESS A TFG WEBSITE OR USE THE SERVICE THROUGH A TFG WEBSITE OR ANY PART THEREOF.

IF YOU DO NOT AGREE TO BE BOUND BY THESE TERMS AND CONDITIONS, YOU MUST LEAVE THE TFG WEBSITE(S) IMMEDIATELY AS FURTHER USE WILL AUTOMATICALLY BIND YOU TO THESE TERMS AND CONDITIONS.

### DEFINITIONS AND INTERPRETATION

The clause headings in this document have been inserted for convenience only and not for interpretation purposes.

Hyperlinks herein to legal documents should be deemed part of these terms and conditions in terms of section 11(3) of the ECT Act. The fact that some or all of the hyperlinks may, from time to time, be non-operational, shall not affect the validity and interpretation of these terms and conditions.

Reference herein to the singular includes the plural and vice versa; and

“Personal Information” on ordinary TFG store websites, refers to:

- residential area code;
- street address;
- non-personal browsing habits and click patterns;
- Internet Protocol (IP) address.

“Personal Information” on the TFG Financial Services website where Users may apply for store credit means:

- residential area code;
- street address;
- postal address;

- title;
- contact numbers;
- ethnic group;
- employment history;
- age;
- sex;
- race;
- marital status;
- nationality;
- colour;
- language;
- financial information;
- Identity number.

“**Services**” means any services available on or through the Website;

“**TFG**” means The Foschini Group Limited, registration number 1937/009504/06, and its subsidiary and affiliated companies, excluding the RCS Group of companies;

“**Website**” means the [@home](#) website, [@homelivingspace](#) website, [American Swiss](#) website, [Charles & Keith](#) website, [Donna-Claire](#) website, [Duesouth](#) website, [Exact!](#) website, [Fabiani](#) website, [Foschini](#) website, [G-star Raw](#) website, [Hi](#) website, [Luella](#) website, [Markham](#) website, [Mat & May](#) website, [Sportscene](#) website, [Sterns](#) website, [Totalsports](#) website, [TFG rewards](#) website, [TFG Club website](#), [TFG](#) website, [TFG iamme](#) website, [TFG CSI](#) and [Infotec](#) website and all other websites owned and operated by TFG, including the content and Service(s) available on and through the websites and any page, part or element thereof;

“**User**” means any person who enters or uses the Website;

“**Web Application**” is an application programme (or “app”) that uses a Web browser and the Internet to accomplish a task for the User on a website. It is developed with web

programming languages and other computer technologies that are intended to be used on the Internet. Examples of Web browsers are FireFox, Safari and Internet Explorer.

## 1. DISCLAIMER AND LIMITATION OF LIABILITY

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1.1 The Website User must use discretion before taking any action based on the information displayed on the Website.

1.2 TFG provides the Website "as is" and it makes no warranty as to its use, availability or performance.

1.3 TFG (including its owners, employees, suppliers, Internet service providers, partners, affiliates and agents) shall not be liable for any damage, loss or liability of any nature incurred by whomever and resulting from:

1.3.1 access to the Website;

1.3.2 access to and use of the Services;

1.3.3 access to websites linked to the Website;

1.3.4 inability to access the Website or use the Services;

1.3.5 inability to access websites linked to the Website;

1.3.6 content available on the Website; or

1.3.7 any other reason not directly related to TFG's gross negligence.

1.4 The TFG website is supplied on an "as is" basis and has not been compiled to meet the User's individual requirements. It is the responsibility of the User to satisfy himself or herself, prior to entering into this agreement with TFG, that the content available from and through the Website meets the User's individual requirements and is compatible with the User's computer hardware and/or software.

1.5 Information, ideas and opinions expressed on the Website should not be regarded as professional advice or the official opinion of TFG and Users are encouraged to obtain professional advice before taking any course of action related to the information, ideas or opinions expressed on the Website.

1.6 TFG does not make any warranties or representations that content and Services available from the Website shall in all cases be true, correct or free from any errors. TFG shall take all reasonable steps to ensure the quality and accuracy of content available from the Website.

1.7 TFG does not make any warranties or representations that the Website shall be available at all times. Users acknowledge that the Website may be unavailable due to updates or other causes beyond the reasonable control of TFG, including, but not limited to, virus infection, unauthorised access (hacking), power failure or other “acts of God.”

1.8 The User must take special note that TFG reserves the right to hold a consumer liable for any losses suffered by TFG due to the cybercrime committed by the User on any of TFG's Websites. Please read clauses 10.3 and 10.5 for more details.

## 2. GENERAL

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TFG consists of the following 18 retail brands which include fashion, home wear, sportswear, cellular and jewellery brands in the country, as well as a host of innovative financial services.

- @home & @homelivingspace
- American Swiss
- Charles & Keith
- DonnaClaire
- DueSouth
- Exact!
- Fashion Express
- Fabiani
- Foschini
- G-Star
- Hi
- Luella
- Markham
- Mat & May
- Sportscene
- Sterns
- Totalsports

TFG trades in over 1 900 stores, making it the foremost specialty retailer in Southern Africa and expanding further into Africa.

## 3. ALLOWED USE AND LICENCE

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3.1 TFG licenses the User to view, download and print the content of the Website provided that such use is for private, personal, educational and/or non-commercial purposes only.

3.2 Content from the Website may not be used or exploited by Users for any commercial or non-private purposes without the prior written consent of TFG.

3.3 Users may only access and browse the Website for legitimate personal or commercial purposes and may not use the Website for:

3.3.1 Harmful purposes;

3.3.2 Illegal purposes;

3.3.3 Disclosing, sharing or publishing material that may be offensive, defamatory, regulated, copyrighted, incorrect, untrue, prohibited, infringing or damaging to any person; and/or

3.3.4 The creation, storage and sending of unsolicited commercial communications.

3.4 The caching of the Website shall only be allowed if

3.4.1 The purpose of the caching is to make the onward transmission of the content from the Website more efficient;

3.4.2 The cached content is not modified in any manner whatsoever;

3.4.3 The cached content is updated at least every 12 (twelve) hours; and

3.4.4 The cached content is removed or updated when so required by TFG.

3.5 If any User uses content from the Website in breach of the provisions detailed herein:

3.5.1 TFG reserves the right to claim damages from the User;

3.5.2 TFG reserves the right to institute criminal proceedings against the User; and

3.5.3 TFG shall not be liable, in any manner whatsoever, for any damage, loss or liability that results from the use of such content by the User or any third party who obtained any content from the User.

3.6 Hyperlinks to the Website from any other source shall be directed to the home page of the Website. Links beyond the TFG home page may only be used with TFG's prior written consent.

3.7 Users may quote small and reasonable amounts of content available from the Website and only if such a quote is placed in inverted commas and acknowledged.

3.8 No person may, without the prior written consent of TFG, frame the Website in any manner whatsoever.

3.9 Apart from bona-fide search engine operators and use of the search facility provided on the Website by Users, no person may use or attempt to use any technology or Web Applications (including web crawlers, robots or web spiders) to search, collect or copy content from the Website for any purpose whatsoever, without the prior written consent of TFG.

3.10 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. No permission is given or should be implied that information on the Website may be used to communicate unsolicited communications to TFG and all rights detailed in section 45 of the ECT Act are reserved.

3.11 All licences and/or permissions granted in terms of this clause 3 are provided on a nonexclusive and non-transferable basis and may be terminated or cancelled by TFG at any time without prior notice or reason.

#### **4. INTELLECTUAL PROPERTY RIGHTS**

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4.1 All licences and/or permissions granted in terms of this clause are provided on a nonexclusive and non-transferable basis and may be terminated or cancelled by TFG at any time without prior notice or reason.

4.2 All intellectual property on the Website, including but not limited to content, trademarks (or any confusingly similar trademarks), trade names, logos, pictures, video, downloads, domain names, patents, design elements, software, source code, meta tags, databases, text, graphics, icons and hyperlinks are the property of or licensed to TFG and as such, are protected from infringement by domestic and international legislation and treaties. Subject to the rights licensed to the User in clause 3, all other rights to intellectual property on the Website are expressly reserved.

4.3 No person shall amend, copy, use, decompile and/or reverse engineer the source code of the Website.

4.4 No person may use logos, icons, photos, pictures, graphics or trademarks and the like from the Website as hyperlinks or for other purposes without TFG's prior written consent.

#### **5. SOFTWARE AND EQUIPMENT**

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It is the responsibility of the User to acquire and maintain, at his/her own expense, the necessary computer hardware, software, communication lines and Internet access accounts required to access the Internet and the Website and/or download content from the Website.

## 6. DISCLOSURES REQUIRED BY SECTION 43 OF THE ECT ACT

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Access to and use of the Website may be classified as “*electronic transactions*” as defined in terms of the ECT Act and therefore Users have the rights detailed in Chapter 7 of the ECT Act and TFG has, amongst others, the duty to disclose the following information:

**FULL NAME AND LEGAL STATUS** The Foschini Group Limited

**REGISTRATION NUMBER** 1937/009504/06

**PHYSICAL ADDRESS** Stanley Lewis Centre, 340 Voortrekker Road, Parow East, 7500, Cape Town, South Africa

**POSTAL ADDRESS** PO Box 6020, Parow East, 7501, Cape Town, South Africa

**TELEPHONE NUMBER** +27 21 938 1911

**WEBSITE ADDRESS** [www.tfg.co.za](http://www.tfg.co.za)

**E-MAIL ADDRESS** [mymoenaw@tfg.co.za](mailto:mymoenaw@tfg.co.za)

### MEMBERSHIP OF SELF-REGULATORY BODIES

Direct Marketing Association of South Africa (DMA)

**CODE OF CONDUCT** Direct Marketing Association Code of Conduct. The User may access their website and download the Code of Conduct.

### PHYSICAL ADDRESS FOR RECEIPT OF LEGAL SERVICE

Stanley Lewis Centre, 340 Voortrekker Road, Parow East, 7500, Cape Town, South Africa

**DIRECTORS** [Click here](#) to view TFG board of directors

**ACCESS TO INFORMATION** [Click here](#) to view the TFG information manual

**ALTERNATIVE DISPUTE RESOLUTION** Subject to urgent and/or interim relief, all disputes regarding:

- i) access and use of the Website;
- ii) the inability to access the Website;
- iii) the Services and content available from the Website; or

iv) these terms and conditions,

shall be referred to arbitration in terms of the expedited rules of the Arbitration Foundation of South Africa and such arbitration proceedings shall be conducted in Cape Town in English. The arbitration ruling shall be final and the unsuccessful party shall pay the costs of the successful party on a scale as between attorney and own client.

## **7. CHANGES AND AMENDMENTS**

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TFG reserves the right, in its sole and absolute discretion, to do any of the following, at any time without prior notice or justification:

7.1 change these terms and conditions;

7.2 change the content and/or Service available from the Website;

7.3 discontinue any aspect of the Website or Service(s) available from the Website; and/or

7.4 change the software and hardware required to access and use the Website;

7.5 to delete the Website.

## **8. PRIVACY**

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8.1. TFG shall take all reasonable steps as required by the Protection of Personal Information Bill and the Promotion of Access to Information Act, to protect the Personal Information of Users that it collects from Users through any of the Websites.

8.2. Personal Information detailed above is collected either electronically by using cookies or is provided voluntarily by the User. Users may determine cookie use independently through their browser settings.

8.3. How TFG uses cookies:

A cookie is a small file which asks the User's browser for permission to be placed on the computer's hard drive. Once the User agrees, the file is added and the cookie helps analyse web traffic. Cookies allow Web Applications to respond to the User as an individual. The Web Application can tailor its operations to the User's needs, likes and dislikes by gathering and remembering information about the User's preferences.



TFG uses traffic log cookies to identify which Website pages are being used. This helps TFG analyse data about web page traffic and improve its Website in order to tailor it to User needs. TFG only uses this Personal Information for statistical analysis purposes and then the data is removed from the system. Overall, cookies help TFG to provide Users with a better website, by enabling it to monitor which pages Users find useful and which they do not. A cookie in no way gives TFG access to the User's computer or any Personal Information about the User, other than the data the User chooses to share with TFG.

Users can choose to accept or decline cookies. Most web browsers automatically accept cookies, but Users can usually modify their browser setting to decline cookies. This however may prevent you from taking full advantage of the Website.

8.4. Providing Personal Information to TFG through its Websites is voluntary. If Users wish to subscribe to a TFG newsletter, they must provide their name and email address otherwise TFG cannot send the newsletter to the User as requested. There are no consequences for not providing Personal Information except to have a limited experience on the Websites.

### **Lawful Processing of Personal Information**

8.5. By using any TFG Website, the User consents to the collection of Personal Information when the User completes any online form.

8.6. The User further warrants that the email address provided to TFG indeed belongs to the User or that the User has permission to use such email address (belonging to a third party) on the Website.

8.7. TFG may collect, maintain, save, compile, modify, destroy, de-identify, share, disclose and sell any Personal Information collected from Users, subject to the following provisions: 8.7.1. TFG shall not disclose Personal Information from Users unless the User consents thereto;

8.7.2. TFG shall disclose Personal Information without the User's consent only through due legal process; and

8.7.3. TFG may compile, use and share any Personal Information for statistical and research purposes and will not publish it in identified form.

8.7.4. TFG will retain records with Personal Information for as long as a law requires it to do so and for TFG's lawful purposes. Personal Information that has been collected will form part of a data bank that TFG will maintain according to law.

### **Purpose for Processing of Personal Information**

8.8. TFG collects, stores and uses the abovementioned Personal Information for the following purposes:

- To communicate User requested information to the User;
- To provide Services to the User as requested by the User;
- To process an application for store credit in terms of the National Credit Act;
- To authenticate the User;
- To market products or Services to the User;
- To allow third parties to market products and Services to the User who specifically consented to it;
- To provide the User with access to restricted pages on a Website; and / or
- To compile non-personal statistical information about browsing habits, click patterns, and access to the Website, and
- Where applicable, to determine whether to grant store credit to a User who applied for it.

### **Ownership**

8.9. TFG owns and retains all rights to de-identified statistical information collected and compiled by TFG.

## **9. HYPERLINKS TO THIRD PARTY SITES**

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9.1 TFG may provide hyperlinks to websites not controlled by TFG (“target sites”) and such hyperlinks do not imply any endorsement, agreement on or support of the content, products and/or Services of such target sites.

9.2 TFG does not editorially control the content, products and/or Services on target sites and shall not be liable, in any manner whatsoever, for the access to, inability to access, use and inability to use or content available on or through target sites.

## **10. SECURITY**

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10.1 TFG shall take all reasonable technical and organizational steps to secure the content of the Website and the Personal Information provided by and collected from Users, from unauthorised access and/or disclosure. However, TFG does not make any warranties or representations that content shall be entirely safe or secure.

10.2 Users may not deliver or attempt to deliver, whether on purpose or negligently, any damaging code, such as computer viruses, robots or spy ware, to the Website or the server and computer network that support the Website.

**10.3 Notwithstanding criminal prosecution, any person who delivers or attempts to deliver any damaging code to the Website, whether on purpose or negligently, shall, without any limitation, indemnify and hold TFG harmless against any and all liabilities, damages, risks and losses that TFG and its partners / affiliates may suffer as a result of such delivery, attempt or damaging code.**

10.4 Users may not develop, distribute or use any device or programme designed to breach or overcome the security measures of the restricted pages, products and Services on the Website and TFG reserves the right to claim damages from any and all persons involved, directly and indirectly, in the development, use and distribution of such devices or programmes.

**10.5 Users who commit any of the offences detailed in sections 85 to 88 of the ECT Act shall, notwithstanding criminal prosecution, be liable for all resulting liabilities, losses, destruction or damages suffered and/or incurred by TFG and its partners / affiliates due to or related to these illegal actions.**

## **11. REMOVAL AND CORRECTION OF CONTENT**

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Users are encouraged to report untrue, inaccurate, defamatory, illegal, infringing and/or harmful content available from the Website to TFG and TFG undertakes to correct and/or remove such content or any part thereof if the person reporting such content provides reasonable grounds to prove the alleged nature of the content.

## **12. INTERCEPTION OF COMMUNICATIONS**

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12.1 Subject to the provisions of the Regulation of Interception of Communications (RIC) Act 70 of 2002, the User agrees to TFG's right to intercept, block, filter, read, delete, disclose and use all communications (including all "data messages" as defined in the ECT Act) sent or posted by the User to the Website or TFG's employees. 12.2 The User agrees and acknowledges that the

consent provided by the User in clause 12.1 satisfies the “writing” requirement as detailed in the ECT Act and the RIC Act.

#### **14. ENTIRE AGREEMENT AND SEVERABILITY**

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14.1 These terms and conditions constitute the entire agreement between TFG and the User and shall take precedence over any disclaimers and/or legal notices attached to any communications and/or postings received by TFG from the User.

14.2 Any failure by TFG to exercise or enforce any right or provision shall in no way constitute a waiver of such right or provision.

14.3 In the event that any term or condition detailed herein is found unenforceable or invalid for any reason, such term(s) or condition(s) shall be severable from the remaining terms and conditions. The remaining terms and conditions shall remain enforceable and applicable.

#### **15. AGREEMENT IN TERMS OF SECTION 21 OF THE ECT ACT**

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The User and TFG agree that:

15.1 the User shall be bound to these terms and conditions and such agreement is concluded in Cape Town (South Africa) at the time the User enters the Website for the first time;

15.2 the User agrees and warrants that data messages (e.g. sms and email) that are sent to TFG from a computer, IP address or mobile device normally used by or owned by the User, were sent and/or authorised by the User personally

15.3 electronic signatures, encryption and/or authentication are not required for valid electronic communications between the User and TFG; and

15.4 when the User sends an email or message through the Website to TFG, it is deemed to have been received when TFG replies to the message. An autoresponse from a Website is not regarded as a reply;

15.5 when TFG sends an email to the User, it is deemed to have been received when the User is capable of downloading the email.

#### **16. APPLICABLE AND GOVERNING LAW**

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The Website is hosted, controlled and operated from the Republic of South Africa and therefore, subject to clause 5’s Alternative Dispute Resolution paragraph, the South African law enforced

by the South African courts governs the use of, or inability to use, the Website, its content, Services, products and these terms and conditions.

## **17. DISCLAIMER**

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The Foschini Group disclaim all liability for any loss, damage or expense however caused, arising from the use of or reliance upon the information provided through this service and does not guarantee the completeness or accuracy of the information.

## **18. LEGAL COSTS**

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TFG shall not be liable for costs incurred by Users to obtain professional advice relating to these terms and conditions.

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