

TERMS AND CONDITIONS OF USE

1. Your acceptance of these terms of use

- 1.1 This web site, which is accessible at www.bombela.com ("**this Web Site**"), is made available by the Bombela Concession Company (Proprietary) Limited, registration number: 2005/031316/07 ("**Bombela**").
- 1.2 The terms and conditions set out below, including any document incorporated by reference ("**the Terms and Conditions**"), apply to any person who uses, accesses, refers to or views any part of this Web Site ("**You**" or "**Your**" including cognitive terms).
- 1.3 By continuing to use this Web Site in any way, You shall be deemed to have unconditionally accepted all of the Terms and Conditions. You must not use this Web Site if You do not agree to all of the Terms and Conditions.
- 1.4 In addition to these Terms and Conditions, You acknowledge that Bombela may, at any time, amend or impose additional terms and conditions relating to any service, product, content, facilities or functionality which is made available by Bombela, Bombela's affiliates, subsidiaries, holding companies, partners, employees, servants or agents , by way of this Web Site.

2. Information on this Web Site

- 2.1 The material contained on this Web Site is for information purposes only. Bombela cannot guarantee that the information displayed on this Web Site is accurate and/or complete.
- 2.2 The information displayed on this Web Site does not constitute advice or a recommendation of any nature. You must not enter into any transactions or make decisions of any nature, based wholly or partly on any information contained in or displayed on this Web Site or on any web site to which this Web Site may provide a link.
- 2.3 Any views or statements expressed on this Web Site are not necessarily the views of Bombela, Bombela's affiliates, subsidiaries, holding companies, partners, employees, servants or agents.

2.4 Any information on this Web Site may be changed by Bombela without notice.

3. **General Disclaimer**

3.1 While Bombela attempts to ensure that the contents of this Web Site are accurate and complete, Bombela makes no representation or warranty, whether express or implied, as to the operation, integrity, availability or functionality of this Web Site or as to the accuracy, completeness or reliability of any information on this Web Site.

3.2 Any person who relies on this Web Site or on the information contained in this Web Site does so at their own risk.

3.3 Additionally, Bombela makes no warranty or representation, whether express or implied, that the information or files available on this Web Site are free of viruses, destructive code or any other material or data which is able to corrupt, compromise, jeopardise, disrupt, disable, harm or otherwise impede in any manner the operation of a computer system, computer network or Your hardware or software. You accept all risk associated with the existence of such viruses, destructive materials or any other data or code which is able to corrupt, compromise, jeopardise, disrupt, disable, harm or otherwise impede, in any manner, the operation or content of a computer system, computer network or Your hardware or software.

4. **Exclusion of liability and indemnity**

4.1 Bombela, its affiliates, subsidiaries, employees, servants or agents shall in no way be liable for any direct, indirect, incidental, special or consequential loss or damages which might arise from Your use of, or reliance upon, any material or content contained in this Web Site or any linked web sites, even if Bombela has been advised of the possibility of such loss, expense, claim or damage. You hereby indemnify Bombela, its affiliates, subsidiaries, employees, servants or agents against any loss, claim or damage which may be suffered by them or any third party arising in any way from Your use of this Web Site.

- 4.2 Without derogating from the generality of the above, to the extent that Bombela is held liable for any claims, loss or damages, in no event will Bombela's total liability exceed R100,00 (one hundred rand).

5. **References and links to and from this Web Site**

- 5.1 This Web Site may, from time to time, contain references or links to other web sites ("**Other Web Sites**") and to the products, opinions or services of third parties. These references or links are not intended to be, and should not be interpreted as an endorsement, recommendation, or affiliation to these Other Web Sites or the opinions, products, services or conduct of third parties. Your use of Other Web Sites or the products or services of third parties will be entirely at Your own risk.
- 5.2 Bombela, its affiliates, subsidiaries, employees, servants or agents shall in no way be liable for any loss (including any loss of profits), damage, liability, expense, claim or penalty, whether direct or indirect, special or consequential, arising from or related to the use or attempted use of Other Web Sites or the opinions, products or services of third parties.
- 5.3 You may not make (or allow any third party to make) any reference to Bombela, this Web Site or content on this Web Site, whether by link or otherwise, without the prior written consent of Bombela.

6. **Intellectual property**

The contents of this Web Site including (without limitation) any software, icons, text, links, graphics, images, sound clips, trade names, logos, trade marks and service marks are protected by law, including but not limited to copyright, patent and trade mark law, and are the property of Bombela and/or third parties. Any unauthorised use of the contents, information or materials on this Web Site is prohibited.

7. **Your behaviour when using this Web Site**

- 7.1 You may not use this Web Site to obtain or distribute:
- 7.1.1 copyrighted material or material protected by law without Bombela's prior written consent; or

- 7.1.2 material containing viruses or any other destructive materials or data or code which is able to corrupt, interfere with, jeopardise, disrupt, disable, harm or otherwise impede in any manner the operation of a computer system or hardware or software.
- 7.2 You must not perform any act which may jeopardise or interfere with the functionality or the operation of any part of this Web Site.
- 7.3 You are strictly prohibited from using this Web Site for "spoofing", "hacking", "flaming", "cracking", "phishing" or "spamming" or any other activity designed or aimed at achieving purposes similar or the same as the aforementioned acts.
- 7.4 You shall not intercept any information transmitted to or from Bombela, or this Web Site, which is not intended to be received by You.

8. Variation of certain deeming provisions in the Electronic Communications and Transactions Act 25 of 2002 ("the ECT Act")

- 8.1 By using this Web Site, You agree that these Terms and Conditions create a binding agreement between You and Bombela, even though these Terms and Conditions are wholly or partly in the form of a data message. You agree specifically that:
 - 8.1.1 the agreement will be treated as if it was concluded at Bombela's physical address on the date on which You first made any use of this Web Site;
 - 8.1.2 an electronic signature is not required by You or Bombela for purposes of agreeing to these Terms and Conditions;
 - 8.1.3 Your use of this Web Site or the Web Site Content is sufficient evidence of Your agreement to these Terms and Conditions;
 - 8.1.4 any data message sent by either You or Bombela to the other will be deemed to have been sent from Bombela's physical address if neither Your usual place of business nor residence is located within the Republic of South Africa;

- 8.1.5 any communication sent to You by an information system programmed to operate automatically on Bombela's behalf will be a data message attributable to, or authorised by Bombela;
- 8.1.6 subject to the further provisions of these Terms and Conditions, a data message sent by You to Bombela will only be treated as having been received by Bombela when an acknowledgement of receipt is sent by Bombela personally or a person who has authority to act on Bombela's behalf in respect of that data message; and
- 8.1.7 this agreement will be interpreted and implemented in accordance with the laws of the Republic of South Africa and You agree to the jurisdiction of the courts of the Republic of South Africa.

9. Variation of these Terms and Conditions

- 9.1 Subject to the variations or amendments provided for in terms of paragraph 9.2, no other variation or amendment, in any form whatsoever, of these Terms and Conditions will be enforceable or binding on Bombela unless Bombela has agreed to such variation or amendment in writing. For this purpose, "*writing*" shall be writing on paper signed in ink by our authorised representative and specifically excludes any writing that may be in electronic format.
- 9.2 We are entitled and reserve the right to vary or amend these Terms and Conditions from time to time and in our sole discretion. Any amendments to these Terms and Conditions will be displayed on the Web Site from time to time. On the first occasion on which you use the Web Site after we amend the Terms and Conditions, you will be notified that amendments to the Terms and Conditions have been effected and if you continue to use the Web Site thereafter, the amended Terms and Conditions will immediately be treated as being effective and binding upon you.
- 9.3 It is your responsibility to access and familiarise yourself with any amendments to the Terms and Conditions on each occasion that you make use of this Web Site.

10. Miscellaneous matters

10.1 Addresses

10.1.1 Bombela's address for the service of any legal notice is:

22 Milkyway Avenue

Linbro Business Park, 2090

10.1.2 Notices given to the above addresses shall be deemed to have been duly given :

10.1.2.1 14 days after posting, if posted by registered post to the party's postal address;

10.1.2.2 on delivery, if delivered to the party's physical address;

10.1.2.3 on despatch, if sent to the party's then fax number.

10.2 Disputes, claims and legal proceedings

10.2.1 Any dispute declared by You and any claim which You may have against Bombela arising out of or in connection with these Terms and Conditions or the use of the Web Site or the Web Site content, including after termination, cancellation or amendment of these Terms and Conditions, will be referred to arbitration in accordance with the Arbitration Act 1965 (as amended) or any replacement Act and will take place in accordance with the Commercial Arbitration Rules of the Arbitration Foundation of Southern Africa.

10.2.2 If Bombela declares a dispute with You, or wishes to institute any claim or legal proceedings against You arising out of or in connection with these Terms and Conditions or Your use of the Web Site or of the Web Site content, Bombela reserves the right to deal with the matter in a forum of its choice, which will include but will not be limited to, the courts of the Republic of South Africa. This right will continue to apply after termination, cancellation or amendment of these Web Site Terms and Conditions.

10.2.3 Notwithstanding anything to the contrary contained in these Terms and Conditions, neither You nor Bombela shall be precluded from obtaining interim relief on an urgent basis from a court of competent jurisdiction pending the institution or resolution of a dispute or other legal proceedings.

10.3 **Costs**

Any costs, including legal costs on attorney and own client scale and value-added tax, incurred by Bombela arising out of Your use of this Web Site or the Web Site content, or a breach of these Terms and Conditions, will be borne by You.

10.4 **Assignment**

10.4.1 You shall not cede, assign or transfer any of Your rights and obligations in these Terms and Conditions without Bombela's prior written consent.

10.4.2 Bombela is entitled to cede, assign or transfer any of its rights and obligations in these Terms and Conditions without Your prior written consent and without notice to You.

10.5 **Interpretation**

10.5.1 A copy of the ECT Act can be viewed and downloaded at <http://www.acts.co.za/ect%5Fact>. It is Your responsibility to ensure that the copy downloaded is the most recent version of the ECT Act.

10.5.2 In the event that any of the terms of these Terms and Conditions are found to be invalid, unlawful or unenforceable, such terms will be severable from the remaining terms, which will continue to be valid and enforceable.

10.5.3 No relaxation or indulgence which Bombela may grant to You will be deemed to be a waiver of any of its rights in these Terms and Conditions or in law.

10.5.4 The termination of the agreement created by these Terms and Conditions will be without prejudice to any other rights or remedies that You or Bombela may be entitled to under this agreement or at law, and

will not affect any of Bombela's or Your accrued rights or liabilities nor the coming into or continuance in force of any provision of these Terms and Conditions which is expressly or by implication intended to come into or continue in force on or after such termination.