



Product Terms

Online Marketing

1. INTERPRETATION

- 1.1. Unless the context clearly indicates the contrary, any term defined in the General Terms when used herein, shall bear the same meaning as defined in the General Terms.
- 1.2. To the extent that there is any contradiction between the General Terms and these Product Terms the following order of precedence shall apply: (i) these Product Terms; and (ii) the General Terms.
- 1.3. By using or subscribing to Online Marketing Customer agrees that he/she/it has read, understand and are bound by:
 - 1.3.1. the General Terms and Conditions and Use Policies under “**General Terms**” and other notices under “**Notices**” on MWEB Business’ Legal Website; and
 - 1.3.2. the Product Terms set out herein;(collectively the “**MWEB Business Terms**”).
- 1.4. Customer’s use of Online Marketing indicates Customer’s acceptance without modification of the MWEB Business Terms, which will constitute a legal agreement between Customer and MWEB Business.
- 1.5. Unless the context clearly indicates to the contrary, the following words bear the meanings ascribed thereto-
- 1.6. “**Application Form**” means the application form completed and signed by Customer for the initiation of Online Marketing;
- 1.7. “**Affiliates**” has the meaning ascribed to it in clause 6.2.5;
- 1.8. “**General Terms**” means the terms and conditions set out in the general terms and conditions for MWEB Business’ customers, which is available at <http://www.mwebbusiness.co.za/legal/GeneralTerms.aspx> under the heading “General Terms”;
- 1.9. “**Material**” means any material, content, images, logos, links, URL’s provided by Customer to MWEB Business to render Online Marketing;
- 1.10. “**MWEB Business Shopping Listing**” has the meaning, as described in clause 6;
- 1.11. “**Online Marketing**” means the Services contemplated in these Product Terms, MWEB Business renders to Customer in accordance with Customer’s selections as indicated in the Application Form or annexure/s thereto; and

2. DURATION



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- 2.1. Online Marketing shall commence with effect from the date of activation of the Online Marketing by MWEB Business and endure until completion of the campaigns indicated in the Application Form. Notwithstanding the aforesaid, the provisions of this clause 2.1 are subject to Customer's termination rights detailed in clauses 7.5, 7.6 and 7.11 of the General Terms where clauses 7.5, 7.6 and 7.11 of the General Terms are applicable to Customer.
- 2.2. To the extent that Online Marketing provided to Customer are suspended by MWEB Business in terms of the provisions of clauses 9 and 12 of the General Terms or for any other reason whatsoever, Customer acknowledges that it will forfeit its access to and/or use of Online Marketing, but Customer shall still be liable to pay the Service Fees during such suspension.

3. SERVICES FEES

- 3.1. Customer shall pay MWEB Business the Services Fees specified in the Application Form in accordance with the payment provisions set out in the General Terms.
- 3.2. Notwithstanding anything to the contrary in the General Terms the Customer agrees that MWEB Business may vary the Service Fees upon giving the Customer 30 (thirty) days notice of such variation. Should the Customer object against such variation and wants to terminate Online Marketing on those grounds it may do so by giving MWEB Business at least 14 (fourteen) days notice of such termination prior to such effective date of the variation of the Service Fees, failing which Customer will be deemed to have consented to such variation.
- 3.3. The Services Fees excludes any agency commission, which will be for the Customer's account.
- 3.4. Commissions earned in terms of clause 6 shall for the purposes of the Agreement be deemed to be Service Fees and shall be charged in arrears.

4. UNDERTAKINGS AND ACKNOWLEDGEMENTS

- 4.1. MWEB Business undertakes to use its reasonable endeavours to provide Customer with Online Marketing on a 24 (twenty four) hour per day basis on each and every day for the continued duration of Online Marketing.
- 4.2. Although MWEB Business uses reasonable care and diligence to ensure that Online Marketing is/are available, accurate, complete, correct, error-free, up-to-date and/or reliable MWEB Business does not warrant, represent or in any way guarantee, either expressly or by implication that the Service/s are available, accurate, complete, correct, error-free, up-to-date and/or reliable. MWEB Business furthermore does not warrant, represent or in any way guarantee, either expressly or by implication the merchantability or fitness for a particular purpose. Customer therefore agrees that Online Marketing are rendered "as is" and "as available" and is used at the Customers' own discretion and risk.



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4.3. Customer acknowledges that the following circumstances and events may impact upon its use of Online Marketing and further that these circumstances and/or events are beyond MWEB Business' control: (i) limitations upon national and/or international bandwidth capacity; (ii) telecommunication service operator failures; telecommunication links failures; (iii) access technology failures; (viii) any action, omission and/or failure by Customer and/or his/her/its systems, software, network and/or equipment which has an impact on Online Marketing; and (iv) any other action, omission and/or failure not within MWEB Business' control which has an impact on Online Marketing.

5. TERMS AND CONDITIONS SPECIFIC TO ONLINE MARKETING

- 5.1. Customer agrees that MWEB Business renders Online Marketing on a non-exclusive basis to Customer. MWEB Business therefore reserves the right to render similar services to other customers as it may deem fit, including where such services are rendered to the Customers' competition or such services are used by such customers to be in competition with Customer.
- 5.2. Nothing herein or that MWEB Business does in the performance of its obligations in terms of Online Marketing shall be interpreted so as to give the Customer any form of entitlement in respect of the relevant website/portal/ publication where the Material is published, including but not limited to, the MWEB Business website/portal, MWEB portal, MWEB travel hub, MWEB homepage, any newsletters of MWEB Business /MWEB and/ or any portion thereof, MWEB Business Shopping portal or Shopping 24 portal.
- 5.3. Customer shall supply the Material required by MWEB Business to give effect to Online Marketing in such format as MWEB Business may specify at least 5 (five) business days prior to the commencement of the particular Online Marketing Services. MWEB shall not be obliged to serve any Material that does not satisfy its technical requirements.
- 5.4. MWEB shall provide the Customer with regular media reports for the entire duration of Online Marketing.
- 5.5. Online Marketing is subject to availability of space on the relevant website/portal/ publication, selected by Customer on the Application Form.
- 5.6. Customer agrees that MWEB Business shall be entitled to a copy of any database of information built up by Customer regarding users who access Customers website/portal via Online Marketing, which Customer agrees to promptly provide to MWEB Business upon request.
- 5.7. Any links/URL's needed by MWEB Business from Customer to provide Online Marketing shall be supplied by the Customer in a format specified by MWEB Business from time to time.
- 5.8. Customer warrants that:
- 5.8.1. it is and at all relevant times will be the lawful owner of the copyright and/or other intellectual property rights in the Material or that it has and at all relevant times will have the necessary rights, licenses in and/or permissions to use the Material for the purposes of Online Marketing; and



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- 5.8.2. the performance by MWEB Business of its obligations under Online Marketing will not result in the breach of any applicable law.
- 5.9. Without limiting the generality of the General Terms Customer hereby unconditionally and irrevocably indemnifies MWEB Business and agrees to hold MWEB Business harmless from and against any costs, losses, harm, liabilities, expenses, damages, injury, penalties or fines directly and/or indirectly suffered or incurred by MWEB Business or for any such claims instituted against MWEB Business by a third party, arising out of or relating to a breach of the aforementioned warranties during or after termination of Online Marketing.
- 5.10. Except if expressly otherwise agreed no Party shall obtain any rights of whatsoever nature in or to the intellectual property rights of the other Party and any intellectual property rights developed during the term of Online Marketing by MWEB Business, its contractors and/or agents or by the parties acting jointly, shall vest exclusively in MWEB Business.
- 5.11. Customer acknowledges that MWEB Business has no knowledge of, nor in any way contributes to, nor approves the content products or items on the website/page any link/URL, supplied by Customer as Material, leads to.
- 5.12. Certain kinds of content, conduct and/or Material may be offensive, unlawful, in breach of codes of conduct binding on MWEB Business, in violation of legislation, in violation of the common law generally, in violation of the requirements or rules of any regulatory authority or in violation of the rights of third parties and such content and/or conduct may cause harm to the name, goodwill and reputation of MWEB Business or be against its Use Policies or the MWEB Business Terms. Customer therefore agrees that MWEB Business may, without derogating from any other rights that it may have to terminate and/or suspend Online Marketing with immediate effect or refuse any services, without notice and without liability of whatever nature should MWEB Business, in its sole discretion, be of the opinion that the website/page any link or URL, supplied by Customer as Material, leads to or any Material supplied or any part thereof is in contravention with the above.
- 5.13. Nothing that MWEB Business does in the performance of its obligations in terms of Online Marketing shall be construed as an assumption of responsibility or liability by MWEB Business for any Material or website/page any link or URL, supplied by Customer as Material, leads to whether or not MWEB Business had knowledge of it or not and without limiting the generality of the General Terms and Use Policies Customer hereby unconditionally and irrevocably indemnifies MWEB Business and agrees to hold MWEB Business harmless from and against any costs, losses, harm, liabilities, expenses, damages, injury, penalties or fines directly and/or indirectly suffered or incurred by MWEB Business or for any such claims instituted against MWEB Business by a third party, arising out of the aforesaid during or after termination of Online Marketing.



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5.14. Notwithstanding termination of Online Marketing Customer agrees to treat all information, in whatever form and howsoever recorded, that may reasonably be argued to have commercial value and that Customer receives from MWEB Business as a result of Online Marketing (“**confidential information**”), as private and confidential and safeguard it accordingly. Such confidential information shall be used only for the purposes of fulfilling the obligations under this Agreement and shall not be disclosed either directly or indirectly to any third party in any manner whatsoever. Customer furthermore agrees not to use or disclose or divulge or copy or reproduce or publish or circulate or reverse engineer and/or decompile or otherwise transfer, whether directly or indirectly, any confidential information to any other person and Customer shall take all such steps as may be reasonably required to prevent confidential information falling into the hands of unauthorized persons.

6. TERMS AND CONDITIONS SPECIFIC TO MWEB BUSINESS SHOPPING LISTING

6.1. Should the Parties have agreed that MWEB Business Shopping Listing forms part of Customer's Online Marketing Services the provisions of this clause 6 shall apply in addition to these Online Marketing Product Terms.

6.2. Listing on MWEB Business Shopping Portal:

6.2.1. MWEB Business shall in accordance with the Customer's choices in the Application Form insert the specified details of the Customer in such relevant category(ies) of the MWEB Business Shopping portal (including a hyper text link to the relevant section of the Customer's web site), as MWEB Business may in its sole discretion from time to time decide, provided that MWEB Business shall at all relevant times list the Customer in at least one relevant category of MWEB Business Shopping. MWEB Business reserves the right to make changes to the MWEB Business Shopping portal categories as it may deem appropriate.

6.2.2. The Customer understands that listing in the MWEB Business Shopping portal is subject to the condition that it meets/ has met the following requirements:

6.2.2.1. Customer is an MWEB Business SafeShop Customer using MWEB Business SafeShop to process all online orders;

6.2.2.2. Customer does not sell or market items or services MWEB Business deems objectionable, such as items and services that are illegal or offensive to sell or market, or otherwise are invasive of the rights of others;

6.2.2.3. Customer does not provide links to sites that sell or market items or services MWEB Business deems objectionable, such as items and services that are illegal or offensive to sell or market, or otherwise are invasive of the rights of others;



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- 6.2.2.4. Customer's web site contains the following information that MWEB Business deems to be required for a good online retailing site: profile, contact information, return policy, privacy statement, security information and shipping rates and policies, as well as detailed product information, images and pricing or other information MWEB Business in its sole discretion may communicate to Customer from time to time;
- 6.2.2.5. Customer's web site represents a complete site, i.e. all products uploaded, no broken images, no broken links, and with all site navigation present at all times;
- 6.2.2.6. Customer's product catalogue will include appropriate fields indicating which products are in stock and are available for sale and the Customer undertakes to maintain and update such fields and information to enable MWEB Business to only include such products in the product library; and
- 6.2.2.7. Customer's product catalogue will include appropriate product identification parameters or anchors, in respect of each product to enable MWEB Business to link directly to the relevant page or portion of the page within the Customer's online store where the product is available for sale.

6.2.3. Website navigation must be present at all times.

6.2.4. Without limiting any other rights MWEB Business may have in terms of the Agreement or in law it reserves the right to suspend or remove a Customer's listing from MWEB Business Shopping portal if at any time any of the terms and conditions in this clause 6.2 are not met.

6.2.5. MWEB Business Shopping Listing is only guaranteed on the MWEB Business Shopping portal, but may also be included on any of MWEB Business's partners' portals ("Affiliate") at such partner's discretion and should the Parties have agreed to such.

6.3. **Inclusion on Product Search:**

6.3.1. MWEB Business will include the Customer's products in the MWEB Business Shopping portal product search library which is accessed and searched by MWEB Business's Shopping portal product search and will provide a hypertext link or other click through method from the Customer's products located by the product search to the relevant page or portion of the page of the Customer's online store where the product may be ordered.

6.3.2. The Customer shall deliver its product catalogue to MWEB Business in such format and medium as MWEB Business may reasonably specify to enable MWEB Business to include the Customer's products in the MWEB Business Shopping portal product library. In this regard the Customer acknowledges and agrees that inclusion of its products in the MWEB Business Shopping portal product library is under the condition that, without limiting the generality of the foregoing Customer obligation, the following requirements have been met:



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- 6.3.2.1. the Customer's product catalogue will include appropriate fields indicating which Customer products are in stock and are available for sale and the Customer undertakes to maintain and update such fields and information to enable MWEB Business to only include such products in the MWEB Business Shopping portal product library; and
- 6.3.2.2. the Customer's product catalogue will include such additional fields and functionalities, including appropriate product identification parameters or anchors, in respect of each product to enable MWEB Business to link directly to the relevant page or portion of the page within the Customer's online store where the product is available for sale, with all site navigation present at all times;
- 6.3.3. Without limiting any other rights MWEB Business may have in terms of the Agreement or in law it reserves the right to suspend or remove a Customer's listing from the MWEB Business Shopping portal product library if at any time any of the terms and conditions in this clause 6.3 are not met.
- 6.3.4. The Customer undertakes to notify MWEB Business in writing at least 2 (two) weeks prior to its online store being closed for any reason whatsoever to enable MWEB Business to remove the Customer's listing from the MWEB Business Shopping portal product library.
- 6.3.5. Without limiting the applicability of clause 5.13 Customer indemnifies and holds MWEB Business free from liability in respect of any loss or damage resulting from or connected to any inaccuracy in product pricing and any other product listing details included in MWEB Business Shopping portal product library and/or non-availability of such products.

6.4. **Commsion and Payment**

- 6.4.1. In consideration for the inclusion of the Customer's products in the Affiliate product library and placement of the products on the Affiliate's web site/s and pages, the Customer agrees that MWEB Business will be entitled to the commisions specified in the Application Form of the total sale price (inclusive of VAT and shipping charges) charged by the Customer in respect of any transaction in the Customer's products resulting from a browser/user navigating to the Customer's online store from the Affiliate's product library and/or Affiliate product search and/or placement of the products on the Affilaite's web site/s. In this regard:
 - 6.4.1.1. MWEB Business will, through the use of technology developed by it in this regard, track the referrals to the Customer's products listed in the Afiliate's product library, to enable MWEB Business to track transactions resulting from a browser/user navigating to the Customer's online store from the Affiliate's product library and/or Affiliate product search and/or placement of the products on the Affilaite's web site/s;



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- 6.4.1.2. the Customer agrees that all transactions in respect of any product(s) sold through its online store as a result of a browser/ user navigating to its online store from the Affiliate's product library and/or Affiliate product search and/or placement of the products on the Affilaite's web site/s will be tracked and will be subject to the commission set out in the Application Form;
- 6.4.1.3. MWEB Business will, where appropriate, provide the Customer with appropriate scripts to be included in the Customers online offerings to enable MWEB Business to track the transactions as set out in clauses 6.4.1.1and 6.4.1.2 and the Customer shall utilise the aforesaid scripts as directed by MWEB Business from time to time and shall not tamper with such scripts in any manner so as to circumvent the provisions of these Product Terms (in which event MWEB Business shall apart from any other remedy it has in terms of the agreement or in law have the right to forthwith suspend the Customer from the Affiliate's product library and/or Affiliate product search and/or placement of the products on the Affilaite's web site/s);
- 6.4.1.4. the Customer agrees that it will be and remain liable for the commission set out in clause 6.4.1 upon bank authorisation and not upon shipping or settlement; and
- 6.4.1.5. the Customer agrees that it will remain liable for the commission set out in clause 6.4.1 notwithstanding any chargebacks authorised by the relevant banks.
- 6.4.2. MWEB Business will provide the Customer with a report URL with a facility to view details of all transactions executed on the Customer's on-line store as a result of browser/user navigating to the Customer's online store from the Affiliate's product library and/or Affiliate product search and/or placement of the products on the Affilaite's web site/s.