

## Sticky Fudge Website Terms and Conditions

Version 1.0

### IMPORTANT NOTICE

By using this website (herein "Website") you acknowledge that you have read, understand and agree to be bound by these terms and conditions (herein "Terms").

If you do not understand and agree to these Terms, or are not legally entitled to so agree, then you may not access or use the Website.

### 1. Terms of use

- 1.1. The Website is operated by Hertzner.
- 1.2. These Terms govern your access to and use of the Website, as well as the ordering, sale and delivery of goods advertised on the Website (herein "**Goods**").
- 1.3. **Your special attention is drawn to the paragraphs in these Terms marked in bold, as such clauses may be onerous in nature.**
- 1.4. **We reserve the right to revise these Terms and any information disclosed on the Website (inclusive of prices of Goods and delivery charges), from time to time, with the revised Terms or other changes taking effect on the date of its publication on the Website. It is your responsibility to stay informed of all such changes, and your continued use of the Website will constitute your deemed acceptance to be bound by such changes.**

### 2. About us

- 2.1. For purposes of section 43(1) of the Electronic Communications and Transactions Act (herein "**ECT Act**"), No. 25 of 2002, we disclose the following information to you:

Full name and legal status	LE BEAU MONDE (PTY) LTD TRADING AS STICKY FUDGE
Place of registration	CIPC, PRETORIA, SOUTH AFRICA
Main business	BUSINESS ACTIVITIES NOT RESTRICTED
Office bearers	MS L BOTHA AND DR I J BOTHA

D Swart & Associates Incorporated t/a Swart Attorneys (Reg. No. 2003/021176/21)

D9 Octo Place, 5 Elektron Road, Techno Park, Stellenbosch | P.O. Box 12266, Die Boord, 7613, Docex 22, Stellenbosch

Office: +27 21 880 5160 | Facsimile: +27 21 880 2807

Director: Dérick Swart Attorneys: Cody Haricombe | Renéé Olmstead | Steven Stuart-Steer

Financial manager: Nadia Truter

Physical address where we will receive legal service of documents	27 PLANKEN STREET, STELLENBOSCH, WESTERN CAPE 7600
General email address	<a href="mailto:INFO@STICKY-FUDGE.COM">INFO@STICKY-FUDGE.COM</a>
General telephone number	060 8818112

### 3. Registration and security

- 3.1. In order to make use of certain services offered on the Website you may be required to create a user account by choosing a unique username and a password (herein "**Login Credentials**"), as well as certain other information necessary or expedient for us to make the Website available to you.
- 3.2. Should your information change, please update it on our Website, otherwise we shall presume that your information is accurate and place reliance thereon.
- 3.3. Traffic between yourself and our website will be authenticated and encrypted using generally accepted secure socket layer (i.e. SSL) certificate and encryption technology.
- 3.4. You acknowledge and agree that:
  - 3.4.1. **you are responsible for keeping your Login Credentials confidential;**
  - 3.4.2. **we will rely on your Login Credentials to verify your identity on the Website;**
  - 3.4.3. **you are responsible for keeping your personal details and addresses listed on our Website up to date, as we will rely on such information for any purposes under these Terms and you will be liable for any wasted costs resulting from failing to do so;**
  - 3.4.4. **you will notify us immediately of any unauthorised access to and/or use of your Login Credentials; and**
  - 3.4.5. **we may deem any action on our Website authenticated with your Login Credentials as having been done by you.**

### 4. Stock availability and orders

- 4.1. We cannot guarantee availability of Goods, despite advertising a particular item on our Website.
- 4.2. Goods in stock may be purchased from us via our Website by placing an order and making payment therefore to us as directed on our Website (herein "**Order**").
- 4.3. If we do not have stock of the Goods on your Order or are unable to fulfil your Order, we will notify you of the part of the Order we are unable to fulfil without delay and refund the relevant payment within 30 (thirty) calendar days.

- 4.4. You may access and view a full record of your Orders via our Website using your Login Credentials.
- 4.5. We reserve ownership of all goods sold until fully paid for.

## 5. Payment

- 5.1. Payment for order placed must be made by way of our third-party credit card payment gateway provider (herein "**Payment Provider**"), namely Peach Payments. When making payment for an Order, our Website will redirect you to the Payment Provider, where payment will take place.
- 5.2. **The Payment Provider is an independent third party and your use of the Payment Provider's services may be subject to additional terms as conveyed on its website or interface, as the case may be.**
- 5.3. **By using a credit card to pay for your orders, you warrant and represent that you are duly authorised to do so.**

## 6. Delivery

- 6.1. We will fulfil your Order and make delivery thereof via our nominated third-party courier as soon as reasonably possible after the placement of an Order, but in any event no later than 30 (thirty) days thereafter.
- 6.2. If we are unable to deliver the Goods to you within the aforesaid period, then we will notify you accordingly and you may then, within 7 (seven) days after receiving such notification, elect whether or not to cancel the Order or not via the functionality made available on our Website. If you notify us of your election to cancel the Order, then we will refund you the amount paid in respect thereof within 30 (thirty) days after receipt of your notification. For clarity, the foregoing will not apply where delivery is delayed as a result of the information provided by you in your Order being incorrect or you being unable to take receipt of the Goods.

## 7. Returns, exchanges and refunds

### 7.1. Defective Goods

- 7.1.1. Subject to clause 7.1.2 below, in the unlikely event of any Goods purchased from us via the Website turning out to have a defect within 6 (six) months from the delivery date, you may return such Goods to us at your cost and if we agree that the item is defective, we shall at our election either replace the item or refund the purchase price. We will notify you of our election without undue delay and in the case of a refund, process the relevant payment within 30 (thirty) calendar days.
- 7.1.2. Purchasing the wrong size of any item will not be deemed to constitute a defect. We provide a sizing chart on our Website to assist you in purchasing the right size.

## 7.2. Non-defective Goods

7.2.1. Except for Goods excluded from return without defect in terms of clause 7.2.3 below, you may cancel any Order within 7 (seven) days of delivery thereof. You will receive a full refund within 30 (thirty) days of the date of cancellation (i.e. your cancellation in such circumstances will entitle you to a refund only and not to replacement items), subject thereto that you have promptly returned the relevant Goods to us at your cost, we have received and inspected it and found it to be in exactly the same condition as we have sent it to you. **If the Goods are not in exactly the same condition as we sent it to you (e.g. tags attached, unworn and unwashed), you will not qualify for a refund.**

7.2.2. **We shall be entitled to subtract from the value of any refund for non-defective Goods the direct cost incurred by us in the returning of the relevant Goods, such as the cost of repackaging in the event that the packaging has been torn or otherwise damaged.**

7.2.3. The following Goods are not eligible for a return as non-defective Goods:

7.2.3.1. intimates, swimwear, bodysuits or underwear;

7.2.3.2. jewellery for piercings;

7.2.3.3. gift cards or vouchers;

7.2.3.4. a beauty product that has been used;

7.2.3.5. foodstuff, beverages or other Goods intended for everyday consumption;

7.2.3.6. Goods that have been personalised for you or made to your specifications;

7.2.3.7. Goods that, by reason of their nature, cannot be returned; or

7.2.3.8. any other Goods excluded from return by virtue of section 42(2) of the ECT Act.

## 8. Usage restrictions

8.1. You may not directly or indirectly:

8.1.1. attempt to overcome any security features of the Website;

8.1.2. place an undue burden on this Website by making a high volume of requests in short succession;

8.1.3. access this Website by automated means, except in the case of a *bona fide* search engines indexing public pages; and

- 8.1.4. use the Website to post and/or distribute material that is obscene, threatening, violent, racial, defamatory, offensive or otherwise unlawful.
- 8.2. We reserve the right to take any steps necessary to preserve the security, integrity and reliability of the Website.
- 8.3. We may, in our sole discretion, terminate or suspend your access to the Website, including (without limitation) in the case:
  - 8.3.1. you breach any of these Terms; or
  - 8.3.2. we are required by law to do so.

## 9. Privacy policy

- 9.1. Unless we seek your express prior consent, we will only collect, store, use and otherwise process the personal information you provide to us to make available this Website and its features to you, and to fulfil any Orders.
- 9.2. We may collect and analyse aggregate, non-personally identifiable data pertaining to the access and use of our Website.
- 9.3. You consent to us disclosing the necessary personal information to our nominated payment gateway provider and courier delivery company to enable us to collect payment and procure delivery respectively.
- 9.4. This Website, like most other, uses cookies (tiny text files placed on your computer) to identify you while using the Website so as to be able to provide certain functionality, such as maintaining your login state. We will not use cookies for any purpose not set out in this clause 9.
- 9.5. **While we will take such care as required by applicable law to protect your personal information, we do not undertake that our Website and your personal information can never be compromised. There is a risk inherent in the use of Internet-based technologies which you acknowledge and accept.**

## 10. Intellectual property rights

- 10.1. For purposes of this clause, the term "**Intellectual Property**" means all intellectual property and similar proprietary rights, howsoever arising and in whatever tangible or intangible media, whether or not registered, including (without limitation) copyright, database rights, patents, trade marks, registered designs, unregistered design rights, domain names, confidential information, business processes, trade secrets goodwill and any applications for the protection or registration of those rights and all renewals and extensions thereof throughout the world (if applicable), as well as any adaptations, derivatives and embodiments of the foregoing.

10.2. The Intellectual Property pertaining to this Website is owned by us (and our licensors, to the extent applicable). You are authorised to view the content published on this Website only for purposes of making use of the Website as permitted by these Terms and for no other reason whatsoever.

### 11. Third-Party Content

- 11.1. We may provide links to other third-party websites and content (herein "**Third-Party Content**") on this Website.
- 11.2. You acknowledge and agree that such Third-Party Content is outside of our control and accordingly that we shall not have any duty and liability in respect thereof.

### 12. Disclaimers, limitations of liability and indemnities

- 12.1. **We do not warrant or represent that this Website will be error free.**
- 12.2. **We do not warrant or represent that this Website will always be accessible.**
- 12.3. **To the maximum extent permitted by applicable law, we will not be liable for any claim, cost, expense, penalty, damage, injury or any other adverse consequence arising from your use of this Website or the purchase and use of any Goods, unless to the extent expressly stated otherwise in these Terms.**
- 12.4. **To the maximum extent permitted by applicable law, you agree to indemnify us from any claim, cost, expense, penalty, damage, injury or any other adverse consequence arising from your breach of these Terms.**

### 13. Notices and address for service

- 13.1. Each of us hereby choose as its address for service and receipt of notices (i.e. *domicilia citandi et executandi*) for purposes under this Agreement, whether in respect of judiciary process or otherwise, our nominated physical address or email address (hereafter each a "**Notice Address**") being in our case of the details provided in these Terms and in your case the current Notice Address(es) you have on your profile with us. Accordingly, insofar as these Terms may prescribe notice periods for the giving of notices, such notice periods shall be complied with upon the giving of notices in compliance with the terms of this clause 13.
- 13.2. Any notice served on a Notice Address before 17h00 in the recipient's time zone shall:
- 13.2.1. if delivered by hand, be deemed to have been received on the day of delivery; or
- 13.2.2. if sent by email, be deemed to have been received on the date when it is capable of retrieval by the recipient.
- 13.3. In the event of delivery of a notice to a Notice Address later than 17h00 in the recipient's time zone, then delivery shall be deemed to have taken place on the next day.

13.4. A delivery or read receipt generated by a sender's email client shall constitute face value (i.e. *prima facie*) proof of the message being capable of retrieval by the recipient.

#### 14. Interpretation

14.1. For purposes of these Terms:

14.1.1. "**Business Day**" means any day which is not a Saturday, Sunday or official public holiday in the Republic of South Africa;

14.1.2. any reference to a statute or other regulatory enactment is to that statute or other regulatory enactment as amended or re-enacted from time to time;

14.1.3. when any number of days is prescribed, it will be reckoned exclusively of the first and inclusively of the last day unless the last day falls on a day which is not a Business Day, in which case the last day will be the following Business Day;

14.1.4. where figures are referred to in numerals and in words, if there is any conflict between the two, the words will prevail;

14.1.5. the rule of interpretation that a contract will be interpreted against the party responsible for the drafting and preparation thereof will not apply;

14.1.6. unless the context shows otherwise, a clause which includes a specific example or examples will not be construed as limiting the meaning of the general wording preceding it; and

14.1.7. the termination or expiry of these Terms will not affect those provisions which expressly provide that they will continue to operate after such termination or expiry, or those provisions which of necessity must continue to have effect after such termination or expiry, even where those clauses do not expressly provide for this.

#### 15. General

15.1. **Applicable law.** This Terms shall be governed by and construed and interpreted in accordance with the laws of the Republic of South Africa. Unless and to the extent expressly agreed otherwise in this Terms, the we agree that the High Court of South Africa, Western Cape Division, shall have exclusive jurisdiction to hear any disputes that may arise from this Terms.

15.2. **Whole agreement.** This Terms constitutes the whole agreement between us as to the subject matter hereof. None of us shall have any claim or right of action arising from any undertaking, representation or warranty not included in this Terms.

- 15.3. **Severability.** Each provision of these Terms is severable from the other provisions. Should any provision be found by a court of competent jurisdiction to be invalid or unenforceable, then the remainder of these Terms will remain binding and continue with full force and effect.
- 15.4. **Cost of legal services.** Each of us will pay its own costs and expenses incurred by it in connection with the negotiation, drafting, re-drafting, entering into and implementation of legally binding documents. Should any one of us instruct attorneys to take any steps to enforce any rights in terms of this Terms arising from a breach thereof, then the breaching party shall be liable for all legal and incidental costs, including legal fees on the attorney and own client scale, collection commission and tracing charges.