

# 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 THE CAPE STAINLESS WEBSITE, WEB PAGES OR ANY PART THEREOF.

IF YOU DO NOT AGREE TO BE BOUND BY THESE TERMS AND CONDITIONS YOU MUST LEAVE THE CAPE STAINLESS WEBSITE WITHOUT DELAY, AS FURTHER USE WILL AUTOMATICALLY BIND YOU TO THESE TERMS AND CONDITIONS.

## DEFINITIONS AND INTERPRETATION

- a) "the Cape Stainless website" means the website, owned and operated by Cape Stainless and located at <http://www.capestainless.co.za/>, including any page, part or element thereof;
- b) "Cape Stainless" means Cape Stainless CC, reg. no. 1993/28486/23 of 17 Hewett Ave, Epping2, 7460;
- c) "User" means any person who enters or uses the Cape Stainless website, notwithstanding the fact that such a person only visits the home page of the Cape Stainless website;
- d) References herein to the singular includes the plural and vice versa; and
- e) 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.

## 1. GENERAL \_\_\_\_\_

Cape Stainless manufactures stainless steel products.

## 2. ALLOWED USE AND LICENSE \_\_\_\_\_

- 2.1 Cape Stainless licenses the User to view, download and print the content of the Cape Stainless website, provided that such content is used for private, personal, educational and/or non-commercial purposes only.
- 2.2 Content from the Cape Stainless website may not be used or exploited by Users for any commercial and non-private purposes without the prior written consent of Cape Stainless.
- 2.3 Users may only access, browse and use the Cape Stainless website for legitimate personal or commercial purposes and may not use the Cape Stainless website or any Cape Stainless services and/or products for:
  - 2.3.1 Harmful purposes;
  - 2.3.2 Illegal purposes;
  - 2.3.3 Disclosing, sharing or publishing material that may be offensive, defamatory, regulated, prohibited, infringing or damaging to any person; and/or
  - 2.3.4 The creation, storage and sending of unsolicited commercial communications.
- 2.4 The caching of the Cape Stainless website shall only be allowed if:
  - 2.4.1 The purpose of the caching is to make the onward transmission of the content from the Cape Stainless website more efficient;
  - 2.4.2 The cached content is not modified in any manner whatsoever;
  - 2.4.3 The cached content is updated at least every 12 (twelve) hours; and

- 2.4.4 The cached content is removed or updated when so required by Cape Stainless.
- 2.5 If any User uses content from the Cape Stainless website in breach of the provisions detailed herein:
- 2.5.1 Cape Stainless reserves the right to claim damages from the User;
- 2.5.2 Cape Stainless reserves the right to institute criminal proceedings against the User; and
- 2.5.3 Cape Stainless shall not be liable, in any manner whatsoever, for any damage, loss or liability that resulted from the use of such content by the User or any third party who obtained any content from the User.
- 2.6 Hyperlinks to the Cape Stainless website from any other source shall be directed at the home page of the Cape Stainless website. Links beyond the Cape Stainless home page may only be used with Cape Stainless' prior written consent.
- 2.7 Cape Stainless shall not be liable, in any manner whatsoever, for any damage, loss or liability that resulted from the use of content, products or services available from the Cape Stainless website, if such content, products or services was accessed through a hyperlink not directed at the home page of the Cape Stainless website. Persons that wish to link to pages beyond the home page of the Cape Stainless website without Cape Stainless' prior written consent shall do so at their own risk and indemnify Cape Stainless against any loss, liability or damage that may result from the use of such hyperlinks. Cape Stainless' non liability for deep linking is based on the fact that deep links bypass these terms and conditions.
- 2.8 Users may quote small and reasonable amounts of content available from the Cape Stainless website and only if such a quote is placed in inverted commas and acknowledged.
- 2.9 No person may, without the prior written consent of Cape Stainless, frame the Cape Stainless website in any manner whatsoever.
- 2.10 Apart from bona-fide search engine operators and use of the search facility provided on the Cape Stainless website by Users, no person may use or attempt to use any technology or applications (including web crawlers, robots or web spiders) to search, collect or copy content from the Cape Stainless website for any purpose whatsoever, without the prior written consent of Cape Stainless.
- 2.11 E-mail addresses, names, telephone numbers and fax numbers published on the Cape Stainless 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 Cape Stainless website may be used to communicate unsolicited communications to Cape Stainless and all rights detailed in 45 of the ECT Act are reserved.
- 2.12 All licenses and/or permissions granted in terms of this clause 2 are provided on a non-exclusive and non-transferable basis and may be terminated or cancelled by Cape Stainless at any time without prior notice or reasons.

### 3. INTELLECTUAL PROPERTY RIGHTS \_\_\_\_\_

- 3.1 All intellectual property on the Cape Stainless website, including but not limited to content, trademarks (or any confusingly similar trademarks), 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 Cape Stainless and as such, are protected from infringement by domestic and international legislation and treaties. Subject to the rights licensed to the User in clause 2, all other rights to intellectual property on the Cape Stainless website are expressly reserved.
- 3.2 No person may use logos, icons or trade marks from the Cape Stainless website as hyperlinks or other purposes without Cape Stainless' prior written consent.

### 4. SOFTWARE AND EQUIPMENT \_\_\_\_\_

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 Cape Stainless website and/or download content from the Cape Stainless website.

### 5. DISCLOSURES REQUIRED BY SECTION 43 OF THE ECT ACT \_\_\_\_\_

*These terms and conditions as well as product and/or service specific terms and conditions govern the sale of goods and /or the provision of services from or through the Cape Stainless website.*

Access to the services, content, software and downloads available from the Cape Stainless 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 Cape Stainless has, amongst others, the duty to disclose the following information:

- 5.1 **The full name and legal status of the website owner:** Cape Stainless CC;
- 5.2 **Managing Member:** Raymond George Whittington.
- 5.3 **Street address:** 17 Hewett Avenue, Epping2, 7460;
- 5.4 **Postal address:** P.O. Box 250, Eppindust, 7475;
- 5.5 **Physical address for receipt of legal service:** 17 Hewett Avenue,  
Epping, 7472
- 5.6 **Telephone number:** +27 21 535 2067;
- 5.7 **Fax number:** +27 21 535 2232;
- 5.8 **Main business:** Manufacture of Stainless Steel Products,
- 5.9 **The website address** of the Cape Stainless website: [www.capestainless.co.za](http://www.capestainless.co.za)
- 5.10 **The office e-mail address** of the Cape Stainless website is: [info@capestainless.co.za](mailto:info@capestainless.co.za)
- 5.11 **Alternative dispute resolution:** Subject to urgent and/or interim relief, all disputes regarding
- 5.11.1 access to the Cape Stainless website;
- 5.11.2 the inability to access the Cape Stainless website;

- 5.11.3 the services and content available from the Cape Stainless website; or
- 5.11.4 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 Pretoria 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. The expedited rules of the Arbitration Foundation of South Africa may be downloaded from the following website: <http://www.arbitration.co.za>:

- 5.12 **Cooling-off period:** Users may return goods or services within 7 (seven) days as detailed in section 44 of the ECT Act and only if such goods or services are not detailed in section 42(2) of the ECT Act; and
- 5.13 Users may lodge complaints concerning the Cape Stainless website with Cape Stainless at [abuse@capestainless.co.za](mailto:abuse@capestainless.co.za).

## 6. **CHANGES AND AMENDMENTS**

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

- 6.1 change these terms and conditions;
- 6.2 change the content and/or services available from the Cape Stainless website;
- 6.3 discontinue, any aspect of the Cape Stainless website or service(s) available from the Cape Stainless website;
- 6.4 and/or change the software and hardware required to access and use the Cape Stainless website.

## 7. **PRIVACY**

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- 7.1 Cape Stainless shall take all reasonable steps to protect the personal information of Users and for the purpose of this clause, "personal information" shall be defined as detailed in the Promotion of Access to Information Act 2 of 2000 (PAIA).
- 7.2 Cape Stainless may electronically collect, store and use the following personal information of Users:
  - 7.2.1 name and surname;
  - 7.2.2 area code;
  - 7.2.3 street address;
  - 7.2.4 postal address;
  - 7.2.5 title;
  - 7.2.6 contact numbers;
  - 7.2.7 non-personal browsing habits and click patterns;
  - 7.2.8 e-mail address; and / or
  - 7.2.9 IP address.
- 7.3 Cape Stainless collects, stores and uses the abovementioned information for the

following purposes:

- 7.3.1 Communicate requested information to the User;
  - 7.3.2 Provide services to the User as requested by the User;
  - 7.3.3 Authenticate the User;
  - 7.3.4 Provide the User with access to restricted pages on this website; and
  - 7.3.5 Compile non-personal statistical information about browsing habits, click-patterns and access to the Cape Stainless website.
- 7.4 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.
- 7.5 Cape Stainless may collect, maintain, save, compile, share, disclose and sell any information collected from users, subject to the following provisions:
- 7.5.1 Cape Stainless shall not disclose personal information from Users unless the User consents thereto;
  - 7.5.2 Cape Stainless shall disclose personal information without the User's consent only through due legal process; and
  - 7.5.3 Cape Stainless may compile, use and share any information that does not relate to any specific individual.
- 7.6 Cape Stainless owns and retains all rights to non-personal statistical information collected and compiled by Cape Stainless.

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

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- 8.1 Cape Stainless may provide hyperlinks to websites not controlled by Cape Stainless ("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.
- 8.2 Cape Stainless 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, inability to use or content available on or through target sites.

## **9. SECURITY**

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- 9.1 Cape Stainless shall take all reasonable steps to secure the content of the Cape Stainless website and the information provided by and collected from Users from unauthorised access and/or disclosure. However, Cape Stainless does not make any warranties or representations that content shall be 100% safe or secure.
- 9.2 Subject to the provisions of sections 43(5) and 43(6) of the ECT Act, if applicable, Cape Stainless is under no legal duty to encrypt any content or communications from and to Users and is also under no legal duty to provide digital authentication of any pages on the Cape Stainless website.
- 9.3 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 Cape Stainless website or the server and computer network that support the Cape Stainless website.
- 9.4 Notwithstanding criminal prosecution, any person who delivers or attempts to

deliver any damaging code to the Cape Stainless website, whether on purpose or negligently, shall, without any limitation, indemnify and hold Cape Stainless harmless against any and all liabilities, damages, risks and losses that Cape Stainless and its partners /affiliates may suffer as a result of such delivery, attempt or damaging code.

- 9.5 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 Cape Stainless website and Cape Stainless 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.
- 9.6 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 Cape Stainless and its partners /affiliates due to or related to these illegal actions.

## 10. **DISCLAIMER AND LIMITATION OF LIABILITY** ---

- 10.1 Subject to the provisions of sections 43(5) and 43(6) of the ECT Act, if applicable, and as far as allowed by law, Cape Stainless (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:
- 10.1.1 access to the Cape Stainless website;
  - 10.1.2 access to websites linked to the Cape Stainless website;
  - 10.1.3 inability to access the Cape Stainless website;
  - 10.1.4 inability to access websites linked to the Cape Stainless website;
  - 10.1.5 content available on the Cape Stainless website;
  - 10.1.6 services available from the Cape Stainless website;
  - 10.1.7 products available from the Cape Stainless website;
  - 10.1.8 downloads and use of content from the Cape Stainless website; and/or
  - 10.1.9 any other reason not directly related to Cape Stainless' gross negligence.
- 10.2 The Cape Stainless 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 Cape Stainless, that the content available from and through the Cape Stainless website meet the User's individual requirements and is compatible with the User's computer hardware and/or software.
- 10.3 Information, ideas and opinions expressed on the Cape Stainless website should not be regarded as professional advice or the official opinion of Cape Stainless and Users are encouraged to consult professional advice before taking any course of action related to the information, ideas or opinions expressed on the Cape Stainless website.
- 10.4 Cape Stainless does not make any warranties or representation that content and services available from the Cape Stainless website shall in all cases be true, correct or free from any errors. Cape Stainless shall take all reasonable steps to ensure the quality and accuracy of content available from the Cape Stainless

website.

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

## **11. COMMENTS**

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Cape Stainless does not edit or scan comments posted by the User or e-mails from the User to Cape Stainless or the Cape Stainless website and shall not be liable for any defamatory, illegal, infringing, hateful, pornographic or harmful postings.

## **12. 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 Cape Stainless website to Cape Stainless and Cape Stainless undertakes to correct and/or remove such content or any part thereof if the person reporting such content provided reasonable grounds to prove the alleged nature of the content.

## **13. INTERCEPTION OF COMMUNICATIONS**

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- 13.1 Subject to the provisions of the Regulation of Interception of Communications (RIC) Act 70 of 2002, the User agrees to the Cape Stainless' right to intercept, block, filter, read, delete, disclose and use all communications (including all "data messages" as defined in the ECT Act) send or posted by the User to the MMC website, its staff and employees. The RIC Act may be downloaded from:  
<http://www.info.gov.za/acts/2002/a70-02/>.

- 13.2 The User agrees and acknowledges that the consent provided by the User in clause 13.1 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 Cape Stainless and the User and shall take precedent over any disclaimers and/or legal notices attached to any communications and/or postings received by Cape Stainless from the User.
- 14.2 Any failure by Cape Stainless 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** \_\_\_\_\_

The User and Cape Stainless agree that:

- 15.1 the User shall be bound to these term and conditions and such agreement is concluded in Pretoria (South Africa) at the time the User enters the Cape Stainless website for the first time;
- 15.2 data messages (as defined in the ECT Act) addressed by the User to Cape Stainless shall only be deemed to have been received if and when responded to;
- 15.3 data messages (as defined in the ECT Act) addressed to the User by Cape Stainless shall be deemed to be received by the User as detailed in section 23(b) of the ECT Act;
- 15.4 data messages (as defined in the ECT Act) addressed by the User to Cape Stainless shall be deemed to have been created and sent by the User from within the geographical boundaries of South Africa;
- 15.5 electronic signatures, encryption and/or authentication is not required for valid electronic communications between the User and the cape Stainless; and
- 15.6 the User agrees and warrants that data messages that are sent to Cape Stainless from a computer, IP address or mobile device normally used by or owned by the User, was sent and/or authorised by the User personally.

**16. APPLICABLE AND GOVERNING LAW** \_\_\_\_\_

The Cape Stainless website is hosted, controlled and operated from the Republic of South Africa and therefore, subject to clause 5.11, the South African law enforced by the South African courts governs the use or inability to use the Cape Stainless website, its content, services, products and these terms and conditions.

**17. LEGAL COSTS** \_\_\_\_\_

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