

THE TOBACCO INSTITUTE OF SOUTHERN AFRICA

Website Terms & Conditions

THESE TERMS AND CONDITIONS ARE BINDING AND ENFORCEABLE AGAINST ALL PERSONS THAT ACCESS THE TOBACCO INSTITUTE OF SOUTHERN AFRICA'S WEBSITE OR ANY PART THEREOF (THE TOBACCO INSTITUTE OF SOUTHERN AFRICA'S WEBSITE) IN TERMS OF SECTION 11(3) OF THE ELECTRONIC COMMUNICATIONS AND TRANSACTIONS (ECT) ACT 25 OF 2002.

IF YOU DO NOT AGREE TO THESE TERMS AND CONDITIONS YOU MUST LEAVE THE TOBACCO INSTITUTE OF SOUTHERN AFRICA'S WEBSITE NOW, AS FURTHER USE WILL AUTOMATICALLY BIND YOU TO THESE TERMS AND CONDITIONS.

A COPY OF THE ECT ACT MAY BE DOWNLOADED FROM:

<http://www.polity.org.za/pdf/ElectronicCommunications.pdf>

DEFINITIONS AND INTERPRETATION

- a) **"The Institute"** means The Tobacco Institute of Southern Africa, a non-profit organisation representing the major tobacco manufacturers and tobacco farmers in South Africa;
- b) **"The Institute's website"** means The Tobacco Institute of Southern Africa's website located at www.tobaccosa.co.za and includes any part, addition thereto or element thereof;
- c) **"User"** means any person who enters or uses The Institute's website, notwithstanding the fact that such a person only visited the home page of The Institute's website;
- d) References herein to the singular includes the plural and vice versa; and
- e) Notwithstanding the fact that hyperlinks in these terms and conditions to copyright notices and legislation should be deemed part of these terms and conditions in terms of section 11 of the ECT Act, the fact that some or all of the hyperlinks may be non-operational, shall not play a role in the determination of the validity and interpretation of these terms and conditions.

1. GENERAL

The Institute was established in 1991 to represent the non-commercial, common interests of the manufacturers and marketers of tobacco products as well as the tobacco growers in South Africa.

2. ALLOWED USE AND LICENSE

- 2.1 The Institute licenses the User to view, download and print the content of The Institute's website, provided that such content is used for personal, educational and/or non-commercial purposes only.
- 2.2 Content from The Institute's website shall not be used or exploited by Users for any commercial and non-private purposes without the prior written consent of The Institute.
- 2.3 Users may only access and use The Institute's website for legal purposes.
- 2.4 The caching of The Institute's 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 Institute's 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 The Institute.
- 2.5 If any User uses content from The Institute's website in breach of the provisions detailed herein:
 - 2.5.1 The Institute reserves the right to claim damages from the User;
 - 2.5.2 The Institute reserves the right to institute criminal proceedings against the User; and
 - 2.5.3 The Institute 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 Institute's website from any other source shall be directed to the home page of The Institute's website. The Institute shall not be liable, in any manner whatsoever, for any damage, loss or liability which may result from the use of content from The Institute's website, if such content was accessed through a hyperlink not directed to the home page of The Institute's website. Users who wish to link to content beyond the home page of The Institute's website shall do so at their own risk and indemnify The Institute against any loss, liability or damage that may result from the use of content from The Institute's website, if such content was accessed through a hyperlink not directed to the home page of The Institute's website.

The Institute's non-liability for deep linking is based on the fact that deep links bypass these terms and conditions.
- 2.7 No person may frame The Institute's website, in any manner whatsoever, without the prior written consent of The Institute.
- 2.8 Apart from bona-fide search engine operators and use of the search facility provided on The Institute's website by Users, no person may use or attempt to use any technology or applications (including web crawlers, web spiders or similar) to search or copy content from The Institute's website for any purpose whatsoever, without the prior written consent of The Institute.
- 2.9 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 The Institute at any time without giving reasons therefor.

3. INTELLECTUAL PROPERTY RIGHTS AND DOMAIN NAME USE

- 3.1 All intellectual property on The Institute's website, including but not limited to content, trademarks, domain names, patents, design elements, software, databases, text, graphics, icons and hyperlinks are the property of or licensed to The Institute 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 Institute's website are expressly reserved.

4. SOFTWARE AND EQUIPMENT

It is the responsibility of the User to acquire and maintain, at his/her own expense, the computer hardware, software, lines and access accounts required to access the Internet and The Institute's website and/or download content from this website.

5. DISCLOSURES REQUIRED BY SECTION 43 OF THE ECT ACT

Access to the services, content, software and content downloads available from The Institute's website is classified as "electronic transactions" in terms of the ECT Act and therefore Users have the rights detailed in Chapter 7 of the ECT Act and The Institute has the duty to disclose the following information:

- 5.1 The full name and legal status of the website owner: The Tobacco Institute of Southern Africa;
- 5.2 Street address: Foyer A, Sovereign Quay, 34 Somerset Road, Green Point, Cape Town, South Africa;
- 5.3 Postal address: P O Box 7648, Roggebaai, Cape Town, South Africa, 8012;
- 5.4 Physical address for receipt of legal service/s: see clause 5.2 above;
- 5.5 Main business: Representative of the non-commercial, common interests of the manufacturers and marketers of tobacco products as well as the tobacco growers in South Africa.
- 5.6 The website address of The Institute's website is: www.tobaccosa.co.za;
- 5.7 The official e-mail address of The Institute's website is: tisa@tobaccosa.co.za;
- 5.8 Membership of self-regulatory or accreditation bodies: None;
- 5.9 Codes of conduct to which The Institute's website subscribes: None;
- 5.10 Copies of the Manual published in terms of section 51 of the Promotion of Access to Information Act 2 of 2000 may be requested from The Institute.
- 5.11 Management: Chairman/CEO: Mr Francois van der Merwe
Executive PA: Chairman/CEO: Mrs Una van Zyl
Finance and Administration: Ms Denise Dalziel
Tobacco Affairs Manager: Ms Zelna Jansen
- 5.12 The costs associated with the access and use of The Institute's website and the Product are as follows: Free;
- 5.13 Alternative dispute resolution: Subject to urgent and/or interim relief, all disputes regarding:
 - 5.13.1 access to The Institute's website;
 - 5.13.2 the inability to access The Institute's website;
 - 5.13.3 the services and content available from The Institute's website;
 - or
 - 5.13.4 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 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. The expedited rules of the Arbitration Foundation of South Africa may be downloaded from the following website: <http://www.arbitration.co.za>;
- 5.14 Cooling-off period: In terms of the operation of section 42(1)(d) of the ECT Act, the cooling-off provisions of section 44 of the ECT Act do not apply to

this website; and

- 5.15 Users may lodge complaints concerning The Institute's website through the "Contact Us" service provided on this website. Users hereby assign the copyright in such complaints to The Institute and understand that The Institute may use, disclose and publish such complaints and is furthermore under no legal duty to answer, resolve or address such complaints. This function is not suitable for anti-tobacco related complaints and Users sending such complaints may be informed that they abuse the service and may, upon receipt of subsequent and similar "complaints", face criminal and/or civil liability.

6. CHANGES AND AMENDMENTS

The Institute expressly reserves the right, in its sole and absolute discretion, to do any of the following, at any time without prior notice:

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

7. PRIVACY

- 7.1 The Institute 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 The Institute may electronically collect, store and use the following personal information of Users:
 - 7.2.1 name and surname;
 - 7.2.2 contact numbers;
 - 7.2.3 non-personal browsing habits and click patterns;
 - 7.2.4 e-mail address/es; and
 - 7.2.5 IP address/es.
- 7.3 The Institute collects, stores and uses the abovementioned information for the following purposes:
 - 7.3.1 to communicate requested information to the User; and
 - 7.3.2 to compile non-personal statistical information about browsing habits, click-patterns and access to The Institute's 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 The Institute may collect, maintain, save, compile, share, disclose and sell any information collected from users, subject to the following provisions:
 - 7.5.1 The Institute shall not disclose personal information of Users unless the User consents thereto;
 - 7.5.2 The Institute shall disclose information without the User's consent only through due legal process; and
 - 7.5.3 The Institute may compile, use and share any information that does not relate to any specific individual.

- 7.6 The Institute owns and retains all rights to non-personal statistical information collected and compiled by The Institute.

8. HYPERLINKS TO THIRD PARTY SITES

- 8.1 The Institute may provide hyperlinks to websites not controlled by The Institute (target sites) and such links do not imply any endorsement, agreement to or support for the content of such target sites; and
- 8.2 The Institute does not editorially control the content on such target sites and shall not be liable, in any manner whatsoever, for the access to, inability to access or content available on or through such target sites.

9. SECURITY

- 9.1 The Institute shall take all reasonable steps to secure the content of The Institute's website and the information provided by and collected from Users from unauthorised access and/or disclosure. However, The Institute does not make any warranties or representations that content shall be 100% safe and secure;
- 9.2 The Institute is under no legal duty to encrypt any content or communications from and to The Institute's website and is also under no legal duty to provide digital authentication of any page on The Institute's website;
- 9.3 Users may not deliver or attempt to deliver, whether on purpose or negligently, any damaging code, such as computer viruses, to The Institute's website or the server and/or computer network that support The Institute's website. Notwithstanding criminal prosecution, any person who delivers any damaging code to The Institute's website, whether on purpose or negligently, shall, without any limitation, indemnify and hold The Institute harmless against any and all liability, damages and losses The Institute and its partners / affiliates may suffer as a result of such damaging code;
- 9.4 Users may not develop, distribute or use any device to breach or overcome the security measures of The Institute's website. The Institute reserves the right to claim damages from any and all persons concerned with and/or connected to a security failure or breach; and
- 9.5 Any User who commits any of the offences detailed in sections 85 to 88 of the ECT Act shall, notwithstanding criminal prosecution, be liable for all resulting liability, loss or damages suffered and/or incurred by The Institute and its partners / affiliates. The ECT Act may be downloaded from:
<http://www.polity.org.za/pdf/ElectronicCommunications.pdf>

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, The Institute (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 Institute's website;
 - 10.1.2 access to websites linked to The Institute's website;
 - 10.1.3 inability to access The Institute's website;
 - 10.1.4 inability to access websites linked to The Institute's website;
 - 10.1.5 content available on The Institute's website;
 - 10.1.6 services available from The Institute's website;
 - 10.1.7 downloads and use of content from The Institute's website;

- 10.1.8 any other reason not directly related to The Institute's gross negligence.
- 10.2 The Institute's 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 The Institute, that the content available from and through The Institute's website meets 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 Institute's website should not be regarded as professional advice or the official opinion of The Institute and Users are encouraged to consult professional advice before taking any course of action related to the information, ideas or opinions expressed on The Institute's website.
- 10.4 The Institute does not make any warranties or representation that content and services available from The Institute's website will in all cases be true, correct or free from any errors. The Institute shall take all reasonable steps to ensure the quality and accuracy of content available from The Institute's website and encourage Users to report incorrect and untrue information, subject to the right of The Institute to rely on its free expression rights and determine, in its sole and absolute discretion, the contents of this website;
- 10.5 The Institute does not make any warranties or representations that The Institute's website shall be available at all times. Users acknowledge that The Institute's website may be unavailable due to updates or other causes beyond the reasonable control of The Institute, including, but not limited to virus infection, unauthorised access, power failure or other "acts of God".

11. REMOVAL AND CORRECTION OF CONTENT

Users are encouraged to report untrue, inaccurate, defamatory, illegal, infringing and/or harmful content available from The Institute's website to The Institute and The Institute 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.

12. INTERCEPTION OF COMMUNICATIONS

- 12.1 Subject to the provisions of the Regulation of Interception of Communications (RIC) Act 70 of 2002, the User agrees to The Institute's right to intercept, block, filter, read, delete, disclose and use all communications sent or posted by the User to The Institute's website, its affiliates and employees; and
- 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.

13. ENTIRE AGREEMENT AND SEVERABILITY

- 13.1 Subject to the provisions of the Content Use License, these terms and conditions constitute the entire agreement between The Institute and the User and shall take precedent over any disclaimers and/or legal notices attached to any communications and/or postings received by The Institute from the User.
- 13.2 Any failure by The Institute to exercise or enforce any right or provision shall in no way constitute a waiver of such right or provision.

- 13.3 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.

14. AGREEMENT IN TERMS OF SECTION 21 OF THE ECT ACT

The User and The Institute agree that:

- 14.1 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 Institute's website for the first time;
- 14.2 data messages (as defined in the ECT Act) addressed by the User to The Institute shall only be deemed to have been received if and when responded to by The Institute;
- 14.3 data messages (as defined in the ECT Act) addressed to the User by The Institute shall be deemed to be received by the User as detailed in section 23(b) of the ECT Act;
- 14.4 data messages (as defined in the ECT Act) addressed by the User to The Institute shall be deemed to have been created and sent by the User from within the geographical boundaries of South Africa;
- 14.5 electronic signatures, encryption and/or authentication is not required for valid electronic communications between the User and The Institute; and
- 14.6 the User agrees and warrants that data messages that are sent to The Institute 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. APPLICABLE AND GOVERNING LAW

Subject to clause 5.13, The Institute's website is hosted, controlled and operated from the Republic of South Africa and therefore the South African law enforced by the South African courts governs the use of or inability to use The Institute's website, its content, services and these terms and conditions.

16. LEGAL COSTS

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

© 2011. ALL RIGHTS NOT EXPRESSLY ALLOWED ARE RESERVED.

These terms and conditions are licensed to The Institute by Buys Inc. Attorneys,
Cape Town, South Africa
(www.buys.co.za)