

WEBSITE TERMS AND CONDITIONS OF USE AND PRIVACY POLICY

1 INTRODUCTION

- 1.1 Engicel CC trading as Gift Tree (registration number 2011/105785/23) ("**we**", "**us**", "**gifttree.co.za**" or "**Gift Tree**") provide an online gift registry service ("**Services**") through the gifttree.co.za website ("**Site**"), which enables you to view and purchase gifts from online gift registries, including home ware, furniture and ancillary items ("**Goods**").
- 1.2 Access to and use of the Site is subject to and governed by the Website Terms and Conditions of Use ("**Terms and Conditions**") detailed below. The Terms and Conditions are binding and enforceable against every person ("**website user**", "**you**" or "**your**") that accesses or uses this Site.
- 1.3 These Terms and Conditions also govern the sale of Goods.

2 IMPORTANT NOTICE

- 2.1 **These Terms and Conditions apply to users who are consumers for purposes of the Consumer Protection Act, 68 of 2008 ("CPA").**
- 2.2 **These Terms and Conditions contain provisions that appear in similar text and style to this clause and which –**
- 2.2.1 **may limit the risk or liability of Gift Tree or a third party; and/or**
- 2.2.2 **may create risk or liability for the user; and/or**
- 2.2.3 **may compel the user to indemnify Gift Tree or a third party; and/or**
- 2.2.4 **serves as an acknowledgement, by the user, of a fact.**
- 2.3 Your attention is drawn to these Terms and Conditions because they are important and should be carefully noted.
- 2.4 If there is any provision in these Terms and Conditions that you do not understand, it is your responsibility to ask us to explain it to you before you accept the Terms and Conditions or continue using the Site.
- 2.5 Nothing in these Terms and Conditions is intended or must be understood to unlawfully restrict, limit or avoid any right or obligation, as the case may be, created for either you or us in terms of the CPA.
- 2.6 Gift Tree permits the use of this Site subject to the Terms and Conditions. By using this Site in any way, you shall be deemed to have accepted all the Terms and Conditions unconditionally. You must not use this Site if you do not agree to the Terms and Conditions.

3 DISCLAIMER

- 3.1 **The use of this Site is entirely at your own risk and you shall assume full responsibility for any risk or loss resulting from use of this Site or reliance on any information on this Site.**
- 3.2 Whilst every effort has been made by gifttree.co.za to ensure the proper performance of this Site, gifttree.co.za accepts no responsibility for any inaccuracies, errors, omissions or misinterpretations relating to the availability of content, information and the Services on the Site and accepts no liability or responsibility whatsoever for any loss or damage, whether direct, indirect or consequential in nature, suffered by any website user arising out of or in connection with access to or use of the Site, any content therein and/or the Services. In particular we make no warranty that the Services will meet your requirements, be uninterrupted, complete, timely, secure or error free.
- 3.3 **Gifttree.co.za provides the Site and the Services on an "as is" basis and grants no warranties of any kind, express, implied or statutory, in any communication between gifttree.co.za or its representatives and you, or otherwise with respect to the Site and the Services.**

4 SCOPE OF WEBSITE USE

- 4.1 You may only download those materials that are within the public domain and clearly marked as being available to be downloaded off this Site. Any content downloaded from this Site may only be

used for personal, non-commercial purposes and no further reproduction or any form of distribution is allowed.

- 4.2 You may not in any way display, publish, copy, print, post or otherwise use the Site and/or the information contained therein without the express prior written consent of an authorised Company representative.
- 4.3 You warrant that the Site shall be accessed and the Services shall be used in a manner consistent with any and all applicable laws and regulations.
- 4.4 No Site user shall be entitled to engage in advertising to, or solicitation of, other members to buy or sell any products or Services through the Site.
- 4.5 No third party is permitted to establish a link to this Site, by way of hyperlink, frame or any other means, either electronically or otherwise unless such third party has obtained written consent from gifttree.co.za. Such consent is within the sole discretion of gifttree.co.za and may be withheld or granted subject to such conditions as specified by gifttree.co.za.
- 4.6 The Site may contain links to or from other sites, but which are not governed by these Terms and Conditions. Where you use such links, we encourage you to familiarise yourself with the applicable terms and conditions and privacy policy of such other website. **Gifttree.co.za accepts no liability or responsibility whatsoever for any loss or damage, whether direct, indirect or consequential in nature, suffered by any website user arising out of or in connection with access to or use of a website linked to the Site or any content therein. Accordingly, gifttree.co.za is in no way responsible for the content or the privacy and security policies employed by linked sites.**

5 TERMS AND CONDITIONS OF SALE

An agreement of sale between you and Gift Tree will come into effect upon completion of an online order summary on the Site and payment or payment authorisation being received by Gift Tree to the satisfaction of Gift Tree.

6 PAYMENT

- 6.1 We are committed to providing secure online payment facilities. All transactions are encrypted using appropriate encryption technology through PayFast and secured by Thawte.
- 6.2 Payment can be made for Goods via -
 - 6.2.1 debit card;
 - 6.2.2 credit card: **You warrant that you are fully authorised to use the credit card supplied for purposes of paying the Goods. You also warrant that your credit card has sufficient available funds to cover all the costs incurred as a result of the services used on the Site;**
 - 6.2.3 direct bank deposit or electronic funds transfer: if you pay via direct bank deposit or electronic funds transfer, payment must be made within 1 (one) hour of placing your order.
- 6.3 The above payment process is explained in more detail under the *Frequently Asked Questions ("FAQ's") and How to Buy Gifts* provided on the Site.
- 6.4 You may contact us via email at info@gifttree.co.za to obtain a full record of your transaction. We will confirm all your purchase orders with you via email.

7 ERRORS

We shall take all reasonable efforts to accurately reflect the Goods and purchase price. However, should there be any errors of whatsoever nature on the Site (which are not due to our gross negligence) we shall not be liable to make good on a transaction based on any error apart from refunding any monies paid by you to Gift Tree

8 ELECTRONIC COMMUNICATIONS

When you visit the Site or send emails to us, you consent to receiving communications from us electronically

9 ONLINE CONTENT

Opinions, advice, statements, offers, or other information or content made available through gifttree.co.za, but not directly by gifttree.co.za, are those of their respective authors, and should not necessarily be relied upon. Such authors are solely responsible for such content. **Gifttree.co.za does not guarantee the accuracy, completeness, or usefulness of any information incorporated in the Site and neither adopts, nor endorses, nor is responsible for the accuracy or reliability of any opinion, advice, or statement made by parties other than gifttree.co.za. Under no circumstances will gifttree.co.za be responsible for any loss or damage resulting from any person's reliance on information or other content posted on the Site.**

10 PERSONAL INFORMATION

10.1 In order to provide the Services, gifttree.co.za requires certain information from you. You may be required to provide us with personal information which includes but is not limited to your name, city, contact details and other related information. As noted above we will also require your billing and related transaction information in the event that you require to be registered for the Services.

10.2 You agree to provide accurate, current and complete information, and to maintain and update your information to keep it accurate, current and complete.

10.3 Gifttree.co.za respects the privacy of your personal information and will take reasonable measures to protect it, as more fully detailed below.

How we use personal information

10.4 On purchase of the Goods, you provide us with your express permission to collect, collate, process and distribute your personal information in terms of which you acknowledge and consent to your personal information being used -

10.4.1 to inform you of any changes to these Terms and Conditions, the Services and any related applications, functions and facilities;

10.4.2 to inform you of organised events;

10.4.3 to monitor, capture, store, analyse and use for gifttree.co.za's own marketing purposes, information related to the use of the Services by you;

10.4.4 to process requests by you for access to the Services;

10.4.5 to advise you of any new Services or related facilities; and

10.4.6 to administer the Terms and Conditions, Services and/or any other related agreements applicable to the provision of Services.

10.5 Your acceptance of these Terms and Conditions indicates your consent to-

10.5.1 us accessing your personal information from Credit Bureaux who are members of the Credit Bureau Association and who subscribe to its Code of Conduct;

10.5.2 sharing information about your payment profile (but not any personal banking details) with Credit Bureaux for purposes of credit information sharing, fraud prevention and debtor tracing;

10.5.3 disclosing your personal information and the content of these Terms and Conditions to Credit Bureaux; and

10.5.4 the Credit Bureaux providing gifttree.co.za with your credit profile and credit scores on your creditworthiness.

10.6 This Site may utilise "Cookies", web beacons and other technologies for data analysis and potential personalisation of the Site and Services offered so that we can better serve you with more customised information. These technologies may vary, but in many cases may involve a small file stored locally on the device used to access the Site, and may be used to store and collect information relating to your use of the Site.

10.7 "Cookies" are used to enhance your interactive experience and generally improve our Services to you. You can set your browser to notify you when you are sent a "Cookie", giving you the chance to decide whether or not to accept it. If you do accept a "Cookie", you thereby consent to our use of

any personal information collected by us using that Cookie.

10.8 Protection of personal information

10.9 Gifftree.co.za undertakes to take all reasonable measures to protect the information you provide to us. These measures include, but are not limited to preventing unauthorised access or disclosure, maintaining data accuracy, the allocation of a password and username and ensuring the appropriate use of the information.

10.10 We will disclose your personal information if and to the extent required to do so in order to comply with applicable law, including the requirements of statutory authorities and/or the lawful order of any court or tribunal.

10.11 While gifftree.co.za will do all things reasonably necessary to protect your rights of privacy while on websites controlled by us, we cannot accept any liability whatsoever for unauthorised or unlawful disclosures of your personal and confidential information made by third parties who are not subject to our control.

11 CORRECTION OF PERSONAL INFORMATION AND OPTING OUT

11.1 Upon request, gifftree.co.za will -

11.1.1 correct personal information that you state is incorrect;

11.1.2 permit you to 'opt out' of further communications (excepting notification of major changes to the Services) from us; and

11.1.3 remove your personal information from our database and/or deregister you as a member, thereby cancelling your access to the Services.

11.2 To request a correction or cancellation, send an e-mail to the following email address: info@gifftree.co.za.

12 INFORMATION SUPPLIED IN TERMS OF SECTION 43 OF THE ELECTRONIC COMMUNICATIONS AND TRANSACTIONS ACT 25 OF 2002

In compliance with section 43 of the Electronic Communications and Transactions Act 25 of 2002, the following information is made available by gifftree.co.za:

12.1 Full name and legal status: Engicel CC t/a Gift Tree, a close corporation incorporated in accordance with the laws of South Africa;

12.2 Physical addresses, telephone numbers, web site addresses, and email addresses: 17 Ludlow Road, Vredehoek, Cape Town; 082 308 6442; 082 562 7748; Gifftree.co.za; Jennifer@gifftree.co.za; Kate@gifftree.co.za;

12.3 Gifftree.co.za's company registration number and its place of registration: 2011/105785/23; South Africa; and

12.4 The physical address where gifftree.co.za will receive legal service of documents: 17 Ludlow Road, Vredehoek, Cape Town.

13 INDEMNITY

You hereby agree to indemnify gifftree.co.za its members, employees, agents and third parties, against any losses, costs, liabilities and expenses (including reasonable attorneys' fees) relating to or arising out of your use of the Site and/or the Services, including but not limited to (i) any breach by you of these Terms and Conditions; (ii) any allegation that any materials that you submit to us or transmit to the Site infringe or otherwise violate the copyright, trademark or other intellectual property or other rights of any third party; and/or (3) your activities in connection with the Site. This indemnity shall be applicable without regard to the negligence of any party, including any indemnified person.

14 INTELLECTUAL PROPERTY

Site users are prohibited from using any content, trademarks and data on this Site, which includes, but is not limited to, software, designs and databases as protected by copyright ("**Copyright Material**"), without first obtaining the written consent of the owner of such Copyright Material. All Copyright

Material on this Site is the property of gifftree.co.za or is licensed to gifftree.co.za and is protected from infringement by South African and international laws.

15 **CHANGES TO TERMS AND CONDITIONS**

Gifftree.co.za reserves the right to change, modify, add to or remove from portions or the whole of these Terms and Conditions from time to time these Terms and Conditions at any time without prior notification. It is your responsibility to review these Terms and Conditions each time you access and/or use the Site. Any changes will be effective immediately with or without notice. By accessing the Site, you will be bound by the latest version of these Terms and Conditions as published on the Site.

16 **AVAILABILITY AND TERMINATION**

16.1 We will use reasonable endeavours to maintain the availability of the Site, except during scheduled maintenance periods, and reserve the right to discontinue providing the Site or any part thereof with or without notice to you.

16.2 **Gift Tree may in its sole discretion terminate, suspend and modify this Site, with or without notice to you. You agree that Gift Tree will not be liable to you in the event that it chooses to suspend, modify or terminate this Site other than for processing any orders made by you prior to such time and to the extent reasonably possible.**

16.3 **If you fail to comply with your obligations under these Terms and Conditions, including any incident involving payment of the price of an order for any Goods, and you fail to remedy such failure within 7 (seven) days of notice to you by us, [this may (in our sole discretion) lead to a suspension of your access to the Site] without any prejudice to any claims for damages or otherwise that we may have against you.**

17 **APPLICABLE LAWS, DISPUTE RESOLUTION AND BREACH**

17.1 These Terms and Conditions are governed by the Laws of the Republic of South Africa. Subject to clause 17.2, you agree that any cause of action that may arise under these Terms and Conditions shall be commenced and heard in the appropriate court in South Africa.

17.2 The parties agree that alternate dispute resolution mechanisms (i.e. negotiation and/or arbitration) shall be the first method of resolving any dispute arising from and/or in connection with these Terms and Conditions.

17.3 A breach of any of these Terms and Conditions by you entitles gifftree.co.za to take appropriate legal action against you and you agree to submit to the exclusive jurisdiction of the courts located within South Africa.

18 **GENERAL PROVISIONS**

18.1 These Terms and Conditions constitute the entire agreement between you and gifftree.co.za regarding the Site, the Services and the purchase of the Goods.

18.2 This agreement supersedes and replaces any and all agreements between the parties (and other persons, as may be applicable) and undertakings given to or on behalf of the parties (and other persons, as may be applicable) in relation to the subject matter hereof.

18.3 No addition to or variation, deletion, or agreed cancellation of all or any clauses or provisions of this agreement will be of any force or effect unless in writing and signed by the parties.

18.4 The Terms and Conditions will survive termination of your use of the Service. If any provision of these Terms and Conditions is held invalid, the remaining provisions shall continue in full force and effect.