

# OPTIMUM ENERGY SERVICES WEB SITE TERMS AND CONDITIONS OF USE

Last Updated: 09 February 2009

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## 1. Privacy Policy

1.1 Optimum Energy is committed to protecting your privacy. Please refer to our Privacy Policy (which can be found at [www.optimumenergy.co.za/legalterms/privacy.pdf](http://www.optimumenergy.co.za/legalterms/privacy.pdf)) for information on how we collect, use and disclose personal information. The terms of our Privacy Policy (as amended from time to time) are incorporated herein by this reference.

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2.2 We reserve the right at any time to change or discontinue without notice, any aspect or feature of the Site.

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- 5.3 Your participation, correspondence or business dealings with any third party found on or through the Site, regarding the payment and delivery of related goods or services, and any other terms, conditions, warranties or representations associated with such dealings, are solely between you and such third party. You agree that Optimum Energy shall not be responsible or liable for any loss, damage or other matters of any sort incurred as the result of any such dealings.

## 6. Interactive Areas

- 6.1 The Site may include discussion forums or other interactive areas or services, including, without limitation, supplier links, blogs, chat rooms, bulletin boards, message boards, online hosting or storage services, or other areas or services in which you, or third parties create, post or store any information, content, messages, comments, materials or other items on the Site ("Interactive Areas"). You are solely responsible for your use of such Interactive Areas and use them at your own risk. By using any Interactive Areas, you agree not to post, upload, transmit, distribute, store, create or otherwise publish through the Site any of the following:
- 6.1.1 Any message, comment, data, document, file, information, text, music, sound, photos, graphics, code or other material ("User Content") that is unlawful, libellous, defamatory, obscene, pornographic, harmful to minors, indecent, lewd, suggestive, harassing, threatening, invasive of privacy or publicity rights, abusive, inflammatory, in breach of an obligation of confidentiality, fraudulent or otherwise objectionable or that you know or have reason to believe is incorrect, inaccurate, misleading or outdated;
  - 6.1.2 User Content that would constitute, encourage or provide instructions for a criminal offence, violate the rights of any party, or that would otherwise create liability or violate any local, provincial, national or international law.
  - 6.1.3 User Content that may infringe any patent, trademark, trade secret, copyright or other intellectual property or contract right of any party. By posting any User Content, you represent and warrant that you have the lawful right to transmit, distribute and reproduce such User Content;
  - 6.1.4 User Content that impersonates any person or entity or otherwise misrepresents your affiliation with a person or entity;
  - 6.1.5 Unsolicited promotions, political campaigning, advertising, junk mail, spam, chain letters, pyramid schemes or solicitations;

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- 6.1.6 Private information of any third party, including, without limitation, addresses, phone numbers, e-mail addresses, identity numbers and credit card numbers;
  - 6.1.7 Viruses, corrupted data or other harmful, disruptive or destructive files; and
  - 6.1.8 User Content that, in the sole judgment of Optimum Energy, is objectionable or which restricts or inhibits any other person from using or enjoying the Interactive Areas or the Site, or which adversely affects the availability of its resources to other users (e.g., excessive shouting, use of all capital letters, or continuous posting of repetitive text), or which may expose Optimum Energy or its users to any harm or liability of any type.
- 6.2 Further, you agree not to delete or revise any User Content posted by any third party. Optimum Energy takes no responsibility and assumes no liability for any User Content posted, stored or uploaded by you or any third party, or for any loss or damage thereto, nor is Optimum Energy liable for any mistakes, defamation, slander, libel, omissions, falsehoods, obscenity, pornography or profanity you may encounter. Your use of Interactive Areas is at your own risk. As a provider of interactive services, Optimum Energy is not liable for any statements, representations or User Content provided by its users in any public forum, personal home page or other Interactive Area.
- 6.3 Although Optimum Energy has no obligation to screen, edit or monitor any of the User Content posted in any Interactive Area, and no User Content is endorsed, reviewed or approved by Optimum Energy, Optimum Energy reserves the right, and has absolute discretion, to remove, screen or edit any User Content posted or stored on the Site at any time and for any reason without notice. You are solely responsible for creating backup copies of and replacing any User Content you post or store on the Site at your sole cost and expense.
- 6.4 Any use of the Interactive Areas or other portions of the Site in violation of the foregoing violates these General Site Terms and may result in, among other things, termination or suspension of your rights to use the Interactive Areas and/or the Site. You acknowledge and agree that Optimum Energy may access, use or disclose any information about you or your use of this Site, including, without limitation, any User Content to comply with the law or any legal process; protect and defend the rights or property of Optimum Energy; or to protect the safety of our company, employees, customers or the public.
- 6.5 If you post User Content to the Site, unless we indicate otherwise, you grant Optimum Energy and its affiliates a non-exclusive, royalty-free, perpetual, irrevocable and fully sub-licensable right to use, reproduce, modify, adapt, publish, translate, create derivative works from, distribute, perform and display such User Content throughout the world in any media. You grant Optimum Energy and its affiliates and sub-licensees the right to use the name that you submit in connection with such content, if they choose. You represent and warrant that (a) you own and control all of the rights to the User Content that you post or you otherwise have the right to post such User Content to the Site; (b) the User Content is accurate and not misleading; and (c) use and posting of the User

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Content you supply does not violate these General Site Terms and will not violate any rights of or cause injury to any person or entity.

## 7. On-Line Order Enquiries and Order Placement

- 7.1 You are able to place on-line orders and order enquiries on this site for various products and or distributed by Optimum Energy. Please refer to our Sales Terms and Conditions (which can be found at [www.optimumenergy.co.za/legalterms/salesterms.pdf](http://www.optimumenergy.co.za/legalterms/salesterms.pdf)) for the terms and conditions that apply to all order enquiries, quotations and orders placed using this site. The terms of our Sales Terms and Conditions (as amended from time to time) are incorporated herein by this reference.

## 8. Indemnification

- 8.1 You agree to defend, indemnify and hold harmless Optimum Energy, its subsidiaries, affiliates, licensors, employees, agents, sponsors, third party information providers and independent contractors against any and all claims, damages, costs, liabilities and expenses (including, but not limited to, reasonable attorneys' fees) arising out of or related to any User Content that you post, store or otherwise transmit on or through the Site or any third party User Content on which you may rely, your conduct, your use of or inability to use the Site, your breach or alleged breach of the General Site Terms or of any representation or warranty contained herein, your unauthorised use of the Optimum Energy Content, or your violation of any rights of another.

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## **11.Dispute Resolution and Governing Law**

- 11.1 These General Site Terms will be governed, construed and take effect in all respects in accordance with the laws of the Republic of South Africa. Any dispute relating in any way to your use of the Site or the Optimum Energy Content shall be submitted to confidential arbitration to be held in Sandton under the rules of the Arbitration Foundation of Southern Africa (or its successor in title), to which arbitration you hereby consent; except that, to the extent you have in any manner violated or

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threatened to violate Optimum Energy's intellectual property rights, Optimum Energy may seek interdictory, injunctive or other appropriate relief in any applicable court in the Republic of South Africa, and you consent to exclusive jurisdiction and venue of such courts. The arbitrator's award shall be binding and may be entered as a judgment in any court of competent jurisdiction. To the fullest extent permitted by applicable law, no arbitration under this Agreement shall be joined to an arbitration involving any other party subject to the General Site Terms, whether through class arbitration proceedings or otherwise.

## **12. Termination**

12.1 Notwithstanding any of these Site Terms, Optimum Energy reserves the right, without notice and in its sole discretion, to terminate your account and/or to block your use of the Site.

## **13. Miscellaneous Provisions**

13.1 These General Site Terms constitute the sole record of the agreement between you and Optimum Energy in relation to your use of the Site. Neither you nor Optimum Energy shall be bound by any express, tacit or implied representation, warranty, promise or the like not recorded herein. Unless otherwise specifically stated these General Site Terms supersede and replace all prior commitments, undertakings or representations, whether written or oral, between you and Optimum Energy in respect of your use of the Site.

13.2 Failure or neglect by Optimum Energy to enforce at any time any of the provisions of the General Site Terms shall not be construed as a waiver of its rights. Any waiver of any provision of the General Site Terms will be effective only if in writing and signed by Optimum Energy. If any clause in these General Site Terms is found to be unenforceable, wherever possible this will not affect any other clause and each will remain in full force and effect. Any rights not expressly granted herein are reserved.

## **14. Changes to General Site Terms**

14.1 Optimum Energy reserves the right to change any of the terms and conditions contained in the General Site Terms or any policy or guideline of the Site, at any time and in its sole discretion. When we make changes, we will revise the "Last Updated" date at the top of the General Site Terms. Any changes will be effective immediately upon posting on the Site. Your continued use of the Site following the posting of changes will constitute your acceptance of such changes. We encourage you to review the General Site Terms whenever you visit this Web site.

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## **15. Questions and Contact Information**

15.1 Questions or comments about the Site or General Site Terms may be directed to Optimum Energy at [\*\*info@optimumenergy.co.za\*\*](mailto:info@optimumenergy.co.za).