



## Terms and Conditions of Use of Service

(General terms relating to the use of the Platform and the provision of Services)

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## 1. INTRODUCTION

TradeSafe is an online platform that provides secure online escrow and paymaster services. These Terms are the general terms which governs the relationship between TradeSafe and the Parties. These Terms cover the use of the Platform as well as the use of any of the Services.

By visiting, signing up on or logging in to the TradeSafe Platform, each Party accepts and agrees to these Terms which will become binding and enforceable against all persons that access the [www.tradesafe.co.za](http://www.tradesafe.co.za) website or any part thereof in accordance with the Electronic Communications and Transactions Act, 25 of 2002.

The parties to the Transaction hereby agree to conduct the transaction electronically.

These Terms apply to any transaction that was created on the TradeSafe platform as well as the use of any TradeSafe Services. The commercial terms of any Trade between TradeSafe and the Parties will be contained in the Trade and will incorporate these Terms.

## 2. DEFINITIONS AND INTERPRETATION

For purposes of the Agreement:

- 2.1. "AFSA" means the Arbitration Foundation of South Africa
- 2.2. "Affiliate" means any parent company, subsidiaries, joint ventures, or other companies under a common control
- 2.3. "Agent" or "Broker" means either a Broker, a sole Agent or an Agent (may be used interchangeably with "Lead Agent") who is assigned to lead a number of sub-agents
- 2.4. "Agreement" means the agreement between TradeSafe and the Party, comprising these Terms and any Trades the parties enter into
- 2.5. "Amended Escrow Instruction(s)" means any addition to, deletion from, or alteration to the terms of the Trade as applied by TradeSafe on the combined instruction of all Parties
- 2.6. "Arbitration" refers to the process whereby an independent arbitrator is assigned to the transaction to adjudicate the merits of the disputing parties in accordance with AFSA's rules for expedited arbitrations
- 2.7. "API" or Application Programming Interface means a set of functions and procedures that allow other systems or websites creation of applications which access the features or data of an operating system, application, or other service
- 2.8. "Business Day" shall refer to the working days Monday through Friday between the hours of 8:00 a.m. and 5:00 p.m. local time
- 2.9. "Buying Party" or "Buyer" means the party procuring the goods and services and who is responsible for funding the transaction as well as providing TradeSafe the instruction to release the funds from the escrow account to the Selling Party/s

- 2.10. "Dispute Date" means the date the Buyer indicated on the Platform that he/she does not accept the goods or services as delivered by the Selling Party
- 2.11. "ECT Act" means the South African Electronic Communications and Transactions Act, 25 of 2002 (as amended)
- 2.12. "Expected Completion Date" or "ECD" means the date the Buyer and Seller have mutually constructed as a trigger date. The ECD can be calculated by taking the date the Seller starts delivering the product/s or starts initiating the service/s, plus the agreed expected number of days for delivery, plus the agreed number of days for inspection. The ECD is deemed a transaction deadline for the Buyer to either accept or reject the goods/services, or request a transaction extension
- 2.13. "Effective Date" means in respect of each Trade, the effective date stipulated in each Trade, in the absence of which it will be the date the Trade is accepted by TradeSafe
- 2.14. "Escrow Account" means the audited and secure account where all money from Trades is held. The account is held by TradeSafe
- 2.15. "Fees" means the transaction fees, charges, and/or purchase consideration that the User will pay to TradeSafe in respect of escrow Services provided by the Platform
- 2.16. "ICANN" means the Internet Corporation for Assigned Names and Numbers
- 2.17. "Inspection Period" means the number of full calendar days established in a Trade to allow a Buyer to inspect the goods delivered or services received
- 2.18. "Negotiation Period" means 10 (ten) Business Days commencing from Dispute Date
- 2.19. "Parties" collectively refers to all legal persons that form party to the Trade transaction and can include:
- the Buying Party;
  - the Selling Party;
  - the Agent or Broker; and
  - other beneficiaries that are Party to the transaction and require payment i.e. sub-agents, advisors or consultants, lawyers, delivery companies etc
- 2.20. "Platform" means [www.tradesafe.co.za](http://www.tradesafe.co.za), a platform that offers secure online escrow and paymaster services, and comprises:
- all content, goods or services, applications, APIs or apps available through the Platform; and
  - any other marketing material of TradeSafe
- 2.21. "SCC" means the Small Claims Court
- 2.22. "Selling Party" or "Seller" means the seller of the goods or services and is the party that receives the sales proceeds from the escrow account to their bank account

- 2.23. "Services" means any services TradeSafe provides to the Party as specified by TradeSafe on the Platform
- 2.24. "Terms" means these terms, comprising of:
- these terms set out in this document ("Terms of Use"); and
  - any other relevant specific terms, disclaimers, rules and notices agreed between the Parties, (including any that may be applicable to a specific section or module of the Platform or any specific Services)
- 2.25. "Trade" means a transaction between the Parties for the provision of goods or services, where TradeSafe will provide escrow or paymaster Services to its users
- 2.26. "TradeSafe" means Trade-Safe Holdings (Pty) Ltd a company registered under the laws of South Africa, registration number 2013/170109/07
- 2.27. "Trigger Event" means an event defined by a Party in a Trade which will act as a signal for TradeSafe to perform its duties under a Trade. Trigger Events will typically include as a minimum:
- When TradeSafe has received the funds from the Buying Party;
  - The Party accepts the goods or services. TradeSafe will then release funds to the Selling Party, Agent or Broker, and/or other approved beneficiaries that require payment;
  - When the ECD has been reached and there has been no action by the Buyer, despite numerous attempts by TradeSafe to reach the Buying Party telephonically or electronically.
  - The Buying Party has initiated a dispute; and/or
  - The Parties could not resolve the dispute within the ascribed 10 (ten) Business Days resulting in TradeSafe initiating the Arbitration process.
- 2.28. "Writing" means any mode of reproducing information or data in physical form and includes hard copy printouts, handwritten documents, fax transmissions; and
- 2.29. "User" or "you" means any Party who visits, signs up to, and logs into the Platform.

#### *Interpretation*

A word defined or assigned a meaning in the Agreement will start with a capital letter. All headings are inserted for reference purposes only and must not affect the interpretation of the Agreement.

Whenever "including" or "include", or "excluding" or "exclude", together with specific examples or items follow a term, they will not limit its ambit. Terms other than those defined within the Agreement will be given their plain English meaning. References to any enactment will be deemed to include references to the enactment as re-enacted, amended, or extended from time to time. A reference to a person includes a natural and juristic person and a reference to either party includes the party's successors or permitted assigns. Unless otherwise stated in the Agreement, when any number of days is prescribed in the Agreement the first day will be excluded and the last day included.

The rule of construction that an agreement must be interpreted against the party responsible for its drafting or preparation does not apply. GMT +2 will be used to calculate any times.

#### *Conflict*

If there is a conflict of meaning between these Terms of Use and any other relevant specific terms, policies, disclaimers, rules and notices agreed between the parties, the specific terms will prevail in respect of the use of the relevant section or module of the Platform, or Services.

### **3. TERM**

These Terms commence on acceptance by the Parties as required and will continue until terminated as provided for in these Terms of Use.

### **4. USE OF THE PLATFORM**

#### **4.1. License to Use the Platform**

TradeSafe grants each User a limited, revocable license to use the Platform subject to the Agreement. Any person wishing to use the Platform contrary to the Agreement must obtain TradeSafe's prior written consent.

#### **4.2. Policies**

TradeSafe may establish general policies and limits concerning the use of the Platform. TradeSafe reserves the right to log off, deactivate, or delete any User account in its sole discretion, provided that TradeSafe will provide prior reasonable notice of such actions with the relevant User.

### **5. RIGHTS OF ACCESS AND USER ACCOUNTS**

#### **5.1. Passwords and Security**

Only a registered User can use the Platform. Each User may only hold one account in their name and is responsible for keeping their login credentials (i.e. the username and password required to access the system) secure and confidential. Each User is solely responsible and liable for activities that occur under their account. The User authorises TradeSafe to act on any instruction given under User's account, irrespective if it transpires that someone had maliciously taken control of the User's account, unless the User has notified TradeSafe prior to TradeSafe acting on a fraudulent instruction.

If a User suspects that their login credentials may have been compromised, the User must:

- Contact TradeSafe immediately on 010 020 3101 or [support@tradesafe.co.za](mailto:support@tradesafe.co.za); and
- Change their password immediately.

Sharing of credentials with any other person may jeopardise the integrity of the TradeSafe account. TradeSafe cannot be held accountable or liable for loss that incurs from shared authorised access.

#### **5.2. Right of Reserve**

TradeSafe reserves the right to reject any User or deny the ability of a User to create an account should it feel that the User is using the TradeSafe account for illegitimate or unscrupulous purposes.

User accounts registered by bots or other automated methods are not permitted. Each User must provide their full legal name, a valid email address, a valid cell phone number, their Identity number, company registration documents, proof of banking accounts and any other information requested by TradeSafe to complete the registration process.

One person may only use each User's login - TradeSafe does not permit multiple people to share a login.

#### 5.3. Verification of Banking Account Details

TradeSafe uses third party verification services provider [ThisIsMe.com](https://thisismy.com) to verify the bank account details of the Parties. To receive payment from TradeSafe, the Seller must have a valid South African bank account and the details of the bank account holder must correspond directly with the details that were entered on the TradeSafe platform. For a business account, the company registration number as entered on the TradeSafe Platform must agree to the company registration number associated with the applicable bank account.

TradeSafe reserves the right to withhold payment until such time it ascertains that the User's bank account details have been verified.

#### 5.4. Other Information That May Be Requested

Dependent on the nature of the User's business, TradeSafe may be compelled to request further information or perform additional procedures which may include performing physical verification of the Seller's/Supplier's site or premises. This is purely to negate the risk of money laundering and to ensure the TradeSafe Platform is used for legitimate purposes.

### 6. RELATIONSHIP OF TRADESAFE TO THE TRANSACTING PARTIES

Depending on the circumstances, TradeSafe may act as the agent of the Buyer or the Seller, as the case may be. For example:

- 6.1. If the Buyer has accepted the goods or services offered by the Seller, the Buyer shall instruct TradeSafe to release the funds to the Seller. In this instance, TradeSafe in accepting the instruction and effecting payment to the Seller acts as an agent for the Buyer.
- 6.2. If an amendment or change to a Trade takes place, and the Parties agree that a portion of the funds is to be returned to the Buyer, the Seller shall instruct TradeSafe to approve the amendment or change to the Trade and to pay a refund to the Buyer. In this example, TradeSafe in accepting the instruction and effecting payment to the Buyer acts as an agent for the Seller.

### 7. CREATING A TRADE AND CONTRACT ACCEPTANCE

#### 7.1. Obligations of User

The terms of the transaction for the provision of goods or services will be provided by the Users and will be submitted with any Trade. When creating a transaction, Users are required to enter or upload the following information:

- Comprehensive details of the transaction;
- A description of the requested goods or service;
- All terms and conditions including the agreed inspection period and delivery arrangements;
- Any contracts, files, photos or documents (if applicable) that pertain to the transaction between the Users; and
- Payment Trigger Events that pertain to the Trade.

#### 7.2. Contract Acceptance

Parties indicate whether they agree to the transaction and accept the Trade's terms and conditions by clicking on the "Accept Trade" button on the Platform.

All Parties are required to accept the Trade for the transaction to be a binding agreement between the Parties. The status of the transaction as displayed on the Platform will be highlighted as "Trade Accepted".

The parties will be notified by Email that the Trade has been accepted and that the Buyer is required to deposit the funds into the Escrow Account.

### 8. FUND DEPOSITED INTO ESCROW

The Buying Party deposits the transaction value into the Escrow Account via EFT payment.

TradeSafe will not be held liable or responsible if the funds are deposited into the incorrect bank account should the Buyer use incorrect bank account details.

TradeSafe has bank accounts with:

- Standard Bank.

All payments emanating from Standard Bank should result in an instantaneous clearance. TradeSafe endeavours to clear the funds within a maximum of 30 (thirty) minutes from the time it learns that the funds have physically arrived in the Escrow Account. Parties must be aware that any delay in verification may be attributed to a problem experienced with the actual payment, or with infrastructure outside of TradeSafe's control

All amounts greater than R5,000,000.00 (five million Rand) are to be deposited with TradeSafe's bank account at Standard Bank to satisfy South Africa's payment system Real Time Gross Settlement provisions.

TradeSafe will not rely on any proof of payments as submitted by the Buyer.

All Parties will be notified once TradeSafe has verified the receipt of the funds into the Escrow Account.

In addition, TradeSafe will furnish all Parties with a signed company letter stating that the funds in the Escrow Account are earmarked for the Seller upon the satisfaction of the Trade's contract condition precedents.



## 9. BUYER'S ACCEPTANCE

### 9.1. Buyer's Involvement

During the Buyer Inspection Period, the Buyer shall either:

- Select the "Accept" button on the Platform. This will notify the Parties that the Buyer has accepted the Goods/Services and that TradeSafe has initiated the payment process out of the Escrow Account;
- Select the "Negotiate" button on the Platform. This will allow Parties to renegotiate certain terms should there be an understandable change in contract performance. Should the other Party not agree to the renegotiated terms, then the Trade will revert to a state as if the "Negotiate" button was never pressed;
- Select the "Dispute" button on the Platform. This will notify TradeSafe and the Parties that the Buyer has not accepted the Goods/Services and has initiated a dispute with the Seller; or
- Select the "Request Extension" button on the Platform. This will allow the Parties to extend the delivery or inspection period.

### 9.2. Deemed Acceptance

The Buyer will be deemed to have accepted the goods or services detailed under a Trade if after the Inspection Period or the ECD the Buyer has failed to inform TradeSafe that they have either accepted, negotiated or disputed the goods or services, or requested an extension to the delivery or inspection period. TradeSafe will endeavour to contact the Buyer for an explanation to the inaction. Should TradeSafe fail to contact the Buyer or obtain a reasonable explanation to the inaction, TradeSafe shall deem the Buyer to have accepted the goods or services. This deemed acceptance authorises TradeSafe to release money to the Seller.

For brevity, the ECD is calculated as follows:

- The date the Seller indicated that he/she had started delivering the goods or services; plus
- The number of days agreed for delivery; plus
- The number of days agreed for inspection.

For example, if it was agreed that delivery would take 3 (three) days and inspection would take 2 (two) days and the Seller started delivering the product or service on, say, 1 January 2017, then the ECD (transaction deadline) would be calculated as 6 January 2017 at 11:59PM.

The date the Seller started delivering the product or service can be determined by either:

- The Seller indicating on the TradeSafe Platform that he/she has started delivering the product or service; or
- Confirmation from a courier company that the goods have been collected from the Seller;

whichever comes earlier.

## **10. PAYMENT OUT OF THE ESCROW ACCOUNT**

### **10.1. Payment to Seller**

Once the Trigger Event for the acceptance of the goods or services has occurred, TradeSafe will proceed to release funds to the Seller after deducting the appropriate Fees (if any) as established in the Trade.

TradeSafe shall use the Seller's bank account details that were entered on the Seller's account profile. TradeSafe shall not be liable or be held responsible should it pay the funds into an incorrect bank account should the Seller have provided incorrect banking account details.

### **10.2. Payment to Agent or other Beneficiaries Who Require Payment**

Once the Trigger Event for the acceptance of the goods or services has occurred, TradeSafe will proceed to release funds to the Agent, then other payment beneficiaries after deducting the appropriate Fees (if any) as established in the Trade.

### **10.3. Summary of Instances Where Parties Will Be Disbursed**

TradeSafe will release the funds to the Seller, Agent or other beneficiaries requiring payment once the following criteria has been satisfied:

- The Buyer accepted the goods or services;
- The Buyer renegotiated certain Trade terms pertaining to the goods or services, of which the Seller agreed to the renegotiated Trade terms;
- The Buyer initiated a dispute which was subsequently resolved by all Parties within 10 Business Days;
- The Buyer initiated a dispute which could NOT be subsequently resolved, and the matter was referred to Arbitration or a South African court of law. TradeSafe will only act on the written instruction of the Arbitrator or a South African Court of Law; or
- The Buyer is deemed to have accepted the goods or services after the transaction deadline ("ECD") and the Buyer has failed to inform TradeSafe that they have either accepted, negotiated or disputed the goods or services, or requested an extension to the delivery or inspection period, despite numerous attempts to contact the Buyer.

#### 10.4. TradeSafe's Payment Run

TradeSafe makes two payments at 10h00 and 15h00 every Business Day.

If authorisation to release the funds was received by TradeSafe between 08h01 and 14h00, then payment will be made at 15h00 that day.

If authorisation to release the funds took place after 14h01, then payment will be made at 09h00 the following Business Day.

When TradeSafe makes payment, all transactions with a value greater than R400,000.00 (four hundred thousand Rand) will trigger Real Time Clearance ("RTC") settlement. This means that the funds should reflect immediately in the Seller's bank account at either 10h00 or 15h00.

For all transactions where the transaction value is less than R400,000.00 (four hundred thousand Rand), and depending on who you bank with, the funds may take up to 24 (twenty-four) hours to reflect in your bank account.

#### 10.5. Priority of Parties in Respect of Payment

Payment to Parties will be done in the following order:

- The Seller or Supplier;
- The Agent; and then
- Other beneficiaries that require payment i.e. sub-agents, lawyers etc.

### 11. REFUND TO BUYER

#### 11.1. Failure of Seller to Initiate Delivery of Product or Service

If the Seller does not begin delivery of the goods or services within, either 10 (ten) Business Days **OR** any other number of days as agreed by the Parties, from the time the Parties being notified that TradeSafe has received the funds from the Buyer, then the Buyer is entitled to request a refund of the funds.

TradeSafe will refund the Buyer after notifying all parties and deducting the Fees.

#### 11.2. Request Adjustment

Should the Buyer request an adjustment to the Trade terms of the Trade, which is subsequently accepted by the Parties, settlement price may be impacted. This may result in either a part or a full refund to the Buyer, net of Fees.

#### 11.3. Dispute

Should the Buyer reject the goods or services and initiate a dispute, the Parties can agree to revised Trade terms which may impact the settlement price. This may result in either a part or a full refund to the Buyer, net of Fees.

#### 11.4. Legal

Upon written instruction by either a registered arbitrator or a South African court of law, the Buyer may be entitled to either a part or a full refund, net of Fees.

## 12. FEES AND ALLOCATION OF AMOUNTS

### 12.1. Allocation of TradeSafe's Fees

The Parties indicate in the Trade who will pay TradeSafe's Fees. TradeSafe's Fees can be paid by either the Buyer, the Seller, the Agent or split equally between the Buyer and the Seller. If:

- The Buyer is selected to pay the Fees, the Fees will be added to the amount that the Buyer must deposit under the Trade;
- The Seller is selected to pay the Fees, the Fees will be deducted from the amount held in the Escrow Account before releasing it to the Seller;
- The Agent is selected to pay the Fees, the Fees will be deducted from the amount held in the Escrow Account before releasing it to the Agent; or
- The Users agree to share the cost of the Fees. Half of the fees will be added to the amount the Buyer must deposit and the other half will be deducted from the money held in Escrow Account before releasing it to the Seller.

### 12.2. Allocation of Amount owing to Agent or Broker

If applicable, the Parties will have indicated in the Trade how payment to the Agent or Broker will be allocated. The amount owing to the Agent or Broker can be paid by either the Buyer, the Seller or split equally between the Buyer and the Seller. If:

- The Buyer is selected to pay the Agent's amount, the amount will be added to the Trade amount that the Buyer must deposit under the Trade;
- The Seller is selected to pay the Agent's amount, the amount will be deducted from the Trade amount held in the Escrow Account before releasing it to the Seller; or
- The Users agree to share the cost of the Agent's amount, then half of the Agent's amount will be added to the amount the Buyer must deposit and the other half will be deducted from the money held in Escrow Account before releasing it to the Seller.

### 12.3. Allocation of Amount Owing to Other Beneficiaries Requiring Payment

If applicable, the transaction creator will have indicated in the Trade how payment to other beneficiaries will be allocated. The amount owing to other beneficiaries can be paid by either the Buyer, the Seller, the Agent or split equally between the Buyer and the Seller.

If:

- the Buyer is selected to pay the other beneficiaries' amount, the amount will be added to the Trade amount that the Buyer must deposit under the Trade;
- the Seller is selected to pay the other beneficiaries' amount, the amount will be deducted from the Trade amount held in the Escrow Account before releasing it to the Seller; or

- the Users agree to share the cost of the other beneficiaries' amount, then half of the other beneficiaries' amount will be added to the amount the Buyer must deposit and the other half will be deducted from the money held in Escrow Account before releasing it to the Seller.

#### 12.4. Interest

Interest on any monies held in the Escrow Account will accrue to TradeSafe.

If the Buyer or the Seller experiences an unexpected extended period before the finalisation of a Trade, the Buyer or Seller may request in writing an instruction to have TradeSafe place the funds into an interest-bearing account for the benefit of the Buyer or the Seller. TradeSafe reserves the right to either approve or reject such a request.

#### 12.5. Taxation

All escrow transaction fees are inclusive of value added tax.

All escrow transaction fees exclude any other taxes levied in any jurisdiction, duty (including stamp duty), tariffs, rates, levies and any other governmental charge or expense payable, which will be payable where applicable by User in addition to the Fees.

#### 12.6. Costs to Implement

Unless otherwise stated, the Parties will bear their own costs to implement (or perform their obligations under) the Agreement.

#### 12.7. Customs and Other Fees

Unless the Users agree otherwise, the Buyer is responsible for any duties, customs fees or other charges resulting from an international Trade, which will be included in the purchase price. It is the responsibility of the Seller to properly declare the merchandise and its value for customs procedures.

### **13. DISPUTE RESOLUTION**

The Platform incorporates an embedded dispute resolution mechanism.

Buyers may initiate a dispute on the Platform should the goods or services they receive be materially different to what was set forth in the Trade and supporting paraphernalia.

Any dispute between the Users in relation to a transaction is between the Users. TradeSafe will not get involved beyond its obligations under the Trade. TradeSafe may offer assistance or facilitate the resolution of a dispute between Users if a dispute between Users arises but is under no obligation to do so.

The Parties hereby agree to use their best efforts to negotiate in good faith during the dispute to reach a resolution which is satisfactory for all parties.

If a User notifies TradeSafe of a dispute relating to a Trade, TradeSafe will immediately freeze the Trade. TradeSafe will only unfreeze the trade if:

- The Parties indicate on the Platform that the dispute has been settled;
- It receives an order from an arbitrator; or

- It receives an order from an appropriate court of law or similar legal body.

If a dispute is declared, the Buyer and Seller will have 10 (ten) days to resolve the dispute between themselves. If they cannot resolve the dispute within this 10-day period, TradeSafe will refer them to:

- the SCC, if the dispute is declared by an individual (not a juristic person) and the value of the dispute is R20,000.00 (twenty thousand Rand) or less; or
- arbitration, if the dispute is declared by a juristic person or the value dispute is more than R20,000.00 (twenty thousand Rand).

## **14. ARBITRATION**

### **14.1. Introduction**

If the dispute resolution process fails and Parties refer the matter to Arbitration, TradeSafe will ascribe to the expedited rules of AFSA which provide for an Arbitrator to make a binding decision based on the documents, facts and merits of the dispute.

The decision of the adjudicator will be binding on the parties.

### **14.2. Arbitrator Selection**

Parties may elect TradeSafe to nominate an adjudicator.

If the Parties do not wish to elect TradeSafe to nominate an adjudicator and are all unable to agree on an arbitrator, then the Secretariat of AFSA will itself select and appoint a suitable Arbitrator where appropriate.

### **14.3. Arbitration Fees**

All fees due to the Arbitrator will be paid by the parties to the dispute and TradeSafe will not be liable in any way.

TradeSafe will inform all Parties the prescribed administration fees to be paid and, from time to time as the proceedings progress, such other fees and costs as may be payable.

The aforesaid administration fees must be deposited into the Escrow Account for the Arbitration process to commence.

Should any one Party fail to pay its share of any administration fee or cost when requested by either TradeSafe or by the AFSA Secretariat, that Party risks the right to participate in the arbitration process so long as that party is in default of payment. The defaulting party may, in the discretion of the arbitrator, be excluded from further proceedings depending upon the circumstances of the case.

### **14.4. Rules for Arbitration Proceedings**

The proceedings shall be adjudicated in accordance with AFSA's rules for expedited arbitrations.

### **14.5. Arbitration Award and Payment**

The arbitrator shall provide his/her award within 30 (thirty) days after finalisation of the proceedings unless the parties otherwise agree or unless the AFSA Secretariat permits an extension of that time.

The arbitrator's award will be published to all Parties.

Unless the Parties have in writing instructed the AFSA Secretariat otherwise at any time before the final award is given, there shall be no right of appeal from the award.

TradeSafe will act on the aforesaid award and abide by the instruction of the arbitrator.

#### 14.6. Non-Liability

TradeSafe shall have no liability in respect to the way the arbitration proceedings were conducted and the associated outcome.

### 15. RETURNED GOODS OR DOMAIN NAMES

#### 15.1. Returned Goods

If the Trade has been disputed, and it is agreed that the goods are to be returned to the Seller, then the Buyer shall be responsible for returning the goods to the Seller to its original destination.

The Buyer agrees to initiate delivery of the goods to the Seller within 10 (ten) Business Days from when being informed that the goods are to be returned to the Seller.

The Seller is entitled to an inspection period, for rejected goods, of 5 (five) days or as mutually agreed. This period will start when:

- The Seller acknowledges receipt of merchandise, service or domains; or
- TradeSafe receives a verification of delivery via the shipper's or registrar's tracking services.

If the Seller rejects the goods, the Trade will remain in a "dispute" status and the funds will be held in escrow until such a time the dispute is resolved. Section 12 of the Agreement namely "Dispute Resolution" will apply and the Parties will have 10 (ten) Business days to resolve the dispute and indicate on the Platform that the dispute was resolved.

The Seller may only reject the goods if the goods have not been received in the same condition as they were sent. If the Seller fails to reject the goods within 5 (five) Business Days, it will be deemed to have accepted the goods and the funds will be released to the Buyer.

#### 15.2. Rejection of Domain Names

If the Trade involves a domain name and the Buyer rejects a domain name (which is not being held by TradeSafe), then, in addition to the normal terms of rejection, the Seller agrees to cooperate in the return process of the domain. In the event the domain transfer to the Buyer has caused an ICANN imposed registrar lock, the Buyer and Seller agree that the Seller will open an account at the receiving registrar to take possession of the domain or that the funds will be held in escrow until this period expires and the domain can be returned to the Seller's registrar.

## 16. KYC AND AML REQUIREMENTS

- 16.1. TradeSafe may, at various times and depending on a range of factors in its sole discretion, including the amount of a Trade actioned and/or the exact nature of the User, require that a User submit certain information to TradeSafe for the User to be verified as not infringing any of TradeSafe's KYC and/or AML requirements and/or local or foreign laws. This information may include identity documents, passport documents and/or bank account information. TradeSafe reserves the right to limit or terminate a User's access and use of the Services should the User fail to adhere to these requirements to the standard required by TradeSafe. TradeSafe also reserves the right to share this information with any legal authority when required under applicable laws.
- 16.2. TradeSafe may restrict User transactions that may violate laws or TradeSafe's internal KYC or AML conditions herein and as updated from time to time.
- 16.3. As a minimum, the following rules are applied:
  - TradeSafe determines that you are the bank account holder
  - That any transaction greater than R500,000 has adequate documentation support
  - Sanction and PIP screening will be initiated for any transaction with a quantum of greater than R5,000,000. TradeSafe uses third-party organisations who provide multi-factor identity verification and enhanced personal/organisation due diligence services to perform the sanction and PIP screening procedure on all Parties participating in the transaction.

## 17. DUTY AND CAPACITY OF USERS

### 17.1. Duty to Notify

Users agree to notify TradeSafe as soon as possible once any Trigger Event is met, or there is a dispute in respect of any Trade. **TradeSafe is not liable for any damages suffered by any User due the failure of a User to notify TradeSafe or the Parties on the Platform.**

### 17.2. Duty to Act

Users agree that they will act promptly and act as soon as possible according to the obligations imposed on them under any Trade.

### 17.3. Capacity of Users

Each User represents and warrants that the User (and any person who uses TradeSafe):

- is old enough under applicable law to enter into the Agreement (i.e. over the age of 18 (eighteen) years old);
- is legally capable of concluding any transaction;
- possesses the legal right, full power, and authority to enter into the Agreement;
- is authorised to access and use the account; and
- will submit true, accurate and correct information to TradeSafe and the Platform.



If User is younger than 18 years of age, User warrants that User has the consent of its legal guardian to enter into the Agreement and will be supervised by their guardian when using the Services and/or Platform, or that User has obtained legal status in another manner.

## **18. CANCELLATION**

The Parties may agree to cancel a Trade if all Parties agree to such cancellation in writing.

**TradeSafe may cancel any Trade at any time in its absolute discretion, provided it gives the relevant users reasonable notice.** TradeSafe will refund any monies already paid by the Buyer less the Fees due.

## **19. TRANSACTIONS INVOLVING AN AGENT OR BROKER AS A PARTY**

### **19.1. Overview**

A Buyer and Seller may participate in a Trade with or without the role of an Agent or Broker.

The Terms will apply to the Agent once the User creates an account on the Platform.

To the extent that an Agent or Broker may be involved in a transaction, it is recommended that the Agent or Broker creates the Trade between Buyer and the Seller. The User can do so by providing the Buyer's and Seller's email addresses on the TradeSafe Platform. If the Agent manages or leads other sub-agent/s and the said sub-agent/s are expected to participate in the Trade, the Agent will have the opportunity to add the sub-agent/s to the transaction as a payment beneficiary.

Neither Agent, Broker nor other payment beneficiaries will have the ability to accept or dispute a Trade on the Buyer's or Seller's behalf.

### **19.2. Third Party Terms**

If a third party supplies or delivers any goods or services directly to you, third party terms or conditions may apply. Users are solely responsible to ensure they understand and agree to those terms.

## **20. INTEGRATIONS**

Any User, company or their affiliates, who integrates their systems or technology with TradeSafe, be it either via its API or other partnership portals or gateways, be it in whole or in part, shall be deemed to agree to the Terms as set forth in this Agreement.

Merchants using the Platform and/or TradeSafe Services shall also be required to complete a merchant agreement with TradeSafe, dictating the additional terms to which they are subject when using the Platform and/or Services.

## **21. UNCLAIMED FUNDS**

To the extent permitted by law, Users registered with TradeSafe with a South African address, that have escrow funds held on deposit for longer than 36 (thirty-six) months and have not allocated such funds to a valid transaction, will have their unused balance refunded to them.

If the funds cannot be returned for whatever reason, then the funds will be held by Standard Bank and a User will be required to contact Standard Bank regarding the process to claim back these funds.

## 22. SUPPORT

Services include access to priority email support which can be reached at [support@tradesafe.co.za](mailto:support@tradesafe.co.za). "Email support" means the ability to make requests for technical support assistance by email at any time (with reasonable efforts by TradeSafe to respond within 1 (one) Business Day) concerning the use of the Services.

Services include access to priority telephonic support which can be reached at +27 10 020 3101 (010 020 3101).

## 23. DISCLAIMER OF WARRANTIES

### 23.1. Disclaimer

Use of the Platform is at the sole responsibility and risk of each User. The Platform is provided on an "as is" and "as available" basis. Except for the warranties given in the Agreement, TradeSafe expressly disclaims, to the extent allowed by law, all representations, warranties, or conditions of any kind, whether express or implied, including:

- any implied warranties or conditions of satisfactory quality, no latent defects, merchantability, fitness for a particular purpose, accuracy, system integration, quiet enjoyment, title, and non-infringement; or
- any warranties with respect to third party software.

TradeSafe does not warrant that the Platform will meet the requirements of any User or be uninterrupted, be legally effective or complete, timely, secure or error-free. Each User should keep up-to-date security software on the systems used to access the Platform.

## 24. ACCEPTABLE USE AND CONDUCT

### 24.1. Responsibility

Each User is responsible for its conduct and Trades on the Platform. Each User must ensure that it has the correct permissions to act on the Platform.

### 24.2. Prohibited conduct

Nothing performed by a User on the Platform or as part of the Service may be unlawful, harmful, threatening, abusive, harassing, defamatory, libellous, invasive of another's privacy, or harm minors in any way. Users are prohibited from using the Platform for the purposes of money laundering, fraud, deception, the sale or distribution of narcotics or firearms, or any other activity that is considered unlawful or harmful.

Users must not harass, stalk, degrade, intimidate, or be hateful toward an individual or group of individuals.

No User may impersonate any person, falsely state, or otherwise misrepresent its affiliation with any person. Nothing may be false, deceptive, misleading or deceitful.

Users must not infringe any patent, trademark, trade secret, copyright, or other proprietary rights of any party.

Any chain letter, pyramid scheme, or advertisement that is prohibited by law, is prohibited on the Platform. The advertising and provision of any illegal service or the sale of any goods that are prohibited or restricted by applicable law are prohibited.

Malware is prohibited. Do not negatively affect the ability of any other User to use the Platform. Do not employ misleading email or IP addresses, or forged headers or otherwise manipulated identifiers in Trade s to disguise the origin of content transmitted through the Platform.

No User may impose an unreasonable or disproportionately large load on TradeSafe's infrastructure.

Users must not attempt to gain unauthorised access to the Platform or engage in any activity that disrupts or diminishes the quality of, interferes with the performance of, or impairs the functionality of the Platform.

TradeSafe will report any suspicious or illegal activity detected on the Platform to the relevant authorities.

## **25. INTELLECTUAL PROPERTY**

### **25.1. Ownership**

Except as provided to the contrary in the Agreement, all right, title, interest, and ownership (including all rights under all copyright, patent, and other intellectual property laws) in, to or of the Platform are the sole property of or will vest in TradeSafe or a third-party licensor. All moral rights are reserved.

### **25.2. Trademarks**

TradeSafe's logo and sub-logos, marks, and trade names are the trademarks of TradeSafe, and no person may use them without permission. Any other trademark or trade name that may appear on the Platform or other marketing material of TradeSafe is the property of its respective owner.

### **25.3. Restrictions**

Except as expressly permitted under the Agreement, the Platform may not be:

- modified, distributed, or used to make derivative works;
- rented, leased, loaned, sold or assigned;
- decompiled, reverse engineered, or copied; or
- reproduced, transferred, or distributed.

### **25.4. Prosecution**

All violations of proprietary rights or the Agreement will be prosecuted to the full extent permissible under applicable law.

## **26. HYPERLINKS, DEEP LINKS, FRAMING**

- 26.1. The Platform may include links to other internet sites ("the other sites"). TradeSafe does not own or endorse the other sites and is not responsible for the information, material, products or services contained on or accessible through the other sites. Any such hyperlinks do not imply any endorsement, agreement on or support of the content or products of such target sites.
- 26.2. TradeSafe does not purport to own the content on other sites which may be shown on the Platform. Should the owner of any content showcased on the Platform want the content to be removed, please write to [info@tradesafe.co.za](mailto:info@tradesafe.co.za) to request the removal of such content.
- 26.3. The User's access and use of the other sites remain solely at the User's own risk and on the terms set by the relevant third-party operator of the other sites.

## **27. ADVERTISING AND SPONSORSHIP**

- 27.1. The Platform may contain advertising and sponsorship. Advertisers and sponsors are responsible for ensuring that material submitted for inclusion in the Platform complies with all applicable laws and regulations.
- 27.2. TradeSafe, its shareholders, employees, suppliers, partners, affiliates and agents accordingly exclude, to the maximum extent permitted in law, any responsibility or liability for any error or inaccuracy appearing in advertising or sponsorship material.

## **28. INDEMNITY**

- 28.1. The User indemnifies and holds harmless TradeSafe, its shareholders, employees, and partners from any demand, action, regulation or application or other proceedings, including for attorneys' fees and related costs such as tracing fees, made by any third party and arising out of or in connection with the User's use of the Platform or TradeSafe Services offered or concluded through the Platform in any way.
- 28.2. The User agrees to indemnify, defend, and hold TradeSafe harmless from any direct or indirect liability, loss, claim and expense (including reasonable legal fees) related to the User's use of the Platform and/or the TradeSafe Services and for breach of these Terms.
- 28.3. This clause will survive termination of this Agreement.

## **29. DISCLAIMERS**

- 29.1. The Platform, including any intellectual property appearing therein, is provided "as is" and "as available". TradeSafe makes no representations or warranties, express or implied, including but not limited to warranties as to the accuracy, correctness or suitability of either the Platform, information provided by another user, the information contained on the Platform in any way.
- 29.2. All information or opinions of Users made available on the Platform in relation to any of the TradeSafe Services are those of the authors and not TradeSafe. While TradeSafe makes every reasonable effort to present such information accurately and reliably on the Platform, TradeSafe does not endorse, approve or certify such information, nor guarantee the accuracy or completeness of such information on the Platform or from another User.

- 29.3. To the fullest extent permitted by law, TradeSafe, its shareholders, employees, and partners, accept no liability whatsoever for any loss, whether direct or indirect, consequential, or arising from information made available on (or by means of) the Platform, other users thereon, and/or transactions or actions resulting therefrom, including a user's use of any Services in any way.
- 29.4. To the fullest extent permitted by law, TradeSafe, its shareholders, employees, partners and affiliates, accept no liability whatsoever for any costs, expenses, fines or damages, including but not limited to direct or indirect loss or damages, including any economic loss, consequential loss, loss of profits or any form of punitive damages, resulting from the facilitation and offering of the TradeSafe Services, and access to, or use of, the Platform in any manner.
- 29.5. Users from locations outside of South Africa, please note that TradeSafe complies with all South African laws in representing and offering the TradeSafe Services. Should foreign law be applicable in any regard to your use of the TradeSafe Services and/or the Platform in any way, you warrant that you are at all times acting in accordance with same foreign law, and indemnify TradeSafe from any liability it may acquire by virtue of its supply of the Platform and/or TradeSafe Services.
- 29.6. TradeSafe takes reasonable security measures to ensure the safety and integrity of the Platform and to exclude viruses, unlawful monitoring and/or access from the Platform. However, TradeSafe does not warrant or represent that your access to the Platform will be uninterrupted or error free or that any information, data, content, software or other material accessible through the Platform will be free of bugs, viruses, worms, trojan horses or other harmful components. The User's access to and use of the Platform remains solely at the User's own risk and the User should take their own precautions accordingly.

### **30. LIMITATION OF LIABILITY**

#### **30.1. Correct Faults**

TradeSafe will correct any fault in the Platform where possible and as soon as reasonably practical and this is its entire liability regarding any fault in the Platform. If this clause is held inapplicable or unenforceable, then the following clause will apply.

#### **30.2. Direct Damages Limited**

To the extent permitted by applicable law, regardless of the form (whether in contract, tort, or any other legal theory) in which any legal action may be brought, TradeSafe's maximum liability to a User for direct damages for anything giving rise to any legal action will be an amount equal to the total fees already paid by the User to TradeSafe for the Services related to the claim. The aggregate amounts for all claims will not be greater than the maximum amount.

### **31. TERMINATION**

#### **31.1. Discontinuance of the Platform**

The Agreement will automatically terminate if TradeSafe discontinues the Platform.

#### **31.2. Breach**

If a User:

- commits a breach of the Agreement;
- repeatedly infringes the copyrights or other rights of others;
- fails to pay any amount due and fails to remedy the breach within 2 (two) calendar days of having been called on in writing to do so;
- affects or attempts to affect a compromise or composition with its creditors;
- is suspected or found to be using the Platform in connection with a fraudulent or illegal activity in any way; or
- is provisionally or finally liquidated or placed under judicial management.

then the User agrees that TradeSafe may, to the extent permitted by applicable law and without prejudice to its rights in the Agreement or in law, deactivate or delete the User's account, terminate access to or use of the Platform, claim specific performance of the Agreement, or cancel the Agreement with the User immediately on written notice and claim damages from User (including, any claim for any Fees already due).

### 31.3. Effects of Termination

On the deactivation or deletion of a User's account, the Agreement with the User will terminate, and access rights will immediately cease to exist. On termination, cancellation or expiry of any Trade, all amounts due to TradeSafe for Services rendered prior to termination will become due and payable even if TradeSafe has not invoiced them. On termination, any amount that owing to a party shall be paid or refunded to that party. User may not withhold the amounts for any reason, unless the arbitrator directs otherwise. The termination, cancellation, or expiry of a Trade will not affect the enforceability of the terms that are intended to operate after expiry or termination.

## 32. DISPUTES BETWEEN USERS AND TRADESAFE

### 32.1. Scope

This dispute clause will only apply to a dispute between Users and TradeSafe and will not regulate disputes between Users.

### 32.2. Notifying Each Other

There will be a dispute about or from this Agreement if a Party writes to the other about it and asks for it to be resolved under this clause. The Parties must refer any dispute to be resolved by:

- Negotiation ((direct talks to try and agree how to end the dispute); failing which
- Mediation (talks in which a neutral third party tries to help the parties agree how to end the dispute); failing which
- Arbitration (a hearing after which a neutral third party makes a binding decision about the dispute).

32.3. Negotiation

Each Party must make sure that their chosen representatives meet within 10 (ten) Business Days of notification, to negotiate and try to end the dispute by written agreement within 15 (fifteen) more Business Days.

32.4. Mediation

If negotiation fails, the Parties must refer the dispute to mediation under AFSA's rules.

32.5. Arbitration

If mediation fails, the Parties must refer the dispute within 15 (fifteen) Business Days to Arbitration (including any appeal against the arbitrator's decision) under AFSA's latest rules for expedited arbitrations. If the Parties cannot agree on the arbitrator within 10 (ten) Business Days after the referral, the Secretariat of AFSA will appoint the arbitrator.

32.6. Periods

The Parties may agree in writing to change the periods for negotiation or mediation.

32.7. Urgent Interim Relief

This clause will not stop a Party from applying to court for urgent interim relief (temporary help) while the dispute resolution process is being finalised. An example might be an interdict.

32.8. Severability

This clause is separate and divisible from the rest of this Agreement and remains effective even if this agreement ends or is invalid.

**33. NOTICES AND DOMICILE**

33.1. Notices

All notices, authorisations, disclosures, acknowledgements, and requests must be sent by hand, prepaid registered post, courier, facsimile, or electronic mail to the addresses and numbers provided on the Platform. By providing contact information, each Party consents to its use for administering the relationship by the other Party and other third parties that help a Party administer the relationship.

33.2. Domicile

Each Party chooses its addresses and numbers provided on the Platform as its *domicilium citandi et executandi* (its domicile for being served summons and execution levied) for all purposes.

33.3. Change of Addresses and Numbers

Each party may change the addresses and numbers provided on the Platform.

33.4. Deemed Delivery

Notice will be deemed delivered on the date the notice was delivered by hand, or the date shown on prepaid registered post, courier, facsimile, or electronic mail confirmation of delivery.

### 33.5. Notice Received

If a notice is actually received by a Party, adequate notice will have been given.

## 34. COMPANY INFORMATION

**Site owner: Trade-Safe Holdings (Pty) Ltd t/a TradeSafe Escrow**

34.1. Legal status:	Private for Profit Limited Liability
34.2. Registration number:	2013/170109/07
34.3. Director:	Richard Banks, CTO
34.4. Description of main business:	Financial Escrow Services
34.5. Telephone number:	010 020 3101
34.6. Email address:	info@tradesafe.co.za
34.7. Application address:	2 Merchant Place, 1 Fredman Dr, Sandton, 2196
34.8. Physical address:	2 Merchant Place, 1 Fredman Dr, Sandton, 2196
34.9. Postal address:	2 Merchant Place, 1 Fredman Dr, Sandton, 2196
34.10. Registered address:	2 Merchant Place, 1 Fredman Dr, Sandton, 2196

## 35. CIRCUMSTANCES BEYOND CONTROL

No Party will be responsible for any breach of the Agreement caused by circumstances beyond its control, including any breakdown or failure of power supply, failure of performances of banks, *force majeure*, the Internet, any telecommunications systems, or any computer hardware or software.

## 36. CESSION AND ASSIGNMENT

No User may delegate its duties under the Agreement or assign its rights under the Agreement, in whole or in part, unless agreed in writing.

## 37. CONFIDENTIALITY AND THE PROCESSING OF YOUR PERSONAL INFORMATION

TradeSafe takes client confidentiality very seriously. All information on the TradeSafe platform is considered confidential and is encrypted using industry standards.

TradeSafe will never divulge, furnish, make available or disclose any client information or transaction information to any individual, company or party, except when and only when it is required by law AND the parties form part to the same transaction. For example:

The following information will be divulged to all Parties involved in a particular transaction i.e. the Buyer and Seller to a particular transaction will have access to the following details of the other Party:

- The individual's first and last name
- The User's Company name and Registration number
- Location or delivery address required for delivery
- Transaction details including documentation



TradeSafe will never sell or trade any customer information or participate in any market related efforts that will require the use of client information or transaction data.

All processing of your personally identifiable information will be conducted strictly in accordance with TradeSafe's [Privacy Policy](#), which can be found on their website.

### **38. NON-PERFORMANCE OF SELLING/SUPPLYING PARTY IN CERTAIN TRANSACTION CLASSES**

Should the Selling Party to a TradeSafe transaction, operating in the following industries:

- Oil & Gas;
- Mining & Metals; or
- Agriculture

fail to initiate delivery or perform on its contractual obligations, post the verification that the funds are in escrow, and the said non-performance was not due to force majeure AND the Selling Party was not the actual owner of the product or service, then TradeSafe, at its discretion, shall enforce the following punitive sanctions on the party listed as the Seller on the TradeSafe system:

- The TradeSafe Seller will be invoiced a R2,500.00 (two thousand five hundred Rand) penalty fee. The Seller's TradeSafe user account will remain suspended until such a time as the invoice has been settled in full; and
- TradeSafe will inform relevant industry role players and/or industry regulators of the Seller inability to perform as it is likely that the so-called supplier was masquerading as the owner of product.

The aforesaid punitive sanctions will also be levied on the Selling Party if it is found that the Seller had furnished TradeSafe's letter of funds confirmation to a party outside of the transaction without TradeSafe's written consent.

### **39. GENERAL**

#### **39.1. Entire Agreement**

The Agreement constitutes the entire agreement between the Parties in respect of the subject matter of the Agreement.

#### **39.2. Changes to Agreement**

The Agreement may be changed at any time by TradeSafe and where this affects the rights and obligations of a User, TradeSafe will notify the User of any changes by placing a notice in a prominent place on the Platform (or by email). If a User does not agree with the change the User should stop using the Platform. If a User continues to use the Platform following notification of a change to the Agreement, the changed terms will apply to the User.

#### **39.3. Waiver**

No granting of time or forbearance will be, or be deemed to be, a waiver of the Agreement and no waiver of any breach will operate as a waiver of any continuing or subsequent breach.

39.4. Severability

If any term is void, unenforceable, or illegal, the term will be severed and the remainder of the Agreement will have full force and effect, provided the severance does not alter the nature of the Agreement.

39.5. Governing Law

The Agreement is governed by and must be interpreted under the laws of the Republic of South Africa