

FOSCHINI

WEBSITE TERMS AND CONDITIONS

IN TERMS OF SECTION 11 OF THE [ELECTRONIC COMMUNICATIONS AND TRANSACTIONS \(ECT\) ACT 25 OF 2002](#) AND THE COMMON LAW OF CONTRACT, THESE TERMS AND CONDITIONS ARE VALID, BINDING, AND ENFORCEABLE AGAINST ALL PERSONS THAT ACCESS A FOSCHINI WEBSITE OR USE THE SERVICE THROUGH A FOSCHINI WEBSITE OR ANY PART THEREOF.

IF YOU DO NOT AGREE TO BE BOUND BY THESE TERMS AND CONDITIONS, YOU MUST LEAVE THE FOSCHINI WEBSITE(S) IMMEDIATELY AS FURTHER USE WILL AUTOMATICALLY BIND YOU TO THESE TERMS AND CONDITIONS.

DEFINITIONS AND INTERPRETATION

The clause headings in this document have been inserted for convenience only and not for interpretation purposes. Reference herein to the singular includes the plural and vice versa and reference to the male gender includes the female gender and vice versa

- a) **“Foschini”** means Foschini Limited, registration number 1937/009504/06, and its subsidiary and affiliated companies, excluding the RCS Group of companies;
- b) **“Website”** means the [Foschini Group website](#), the [Foschini website](#), the [Donna Claire website](#), the [Markham website](#), the [Exact website](#), the [Sportscene website](#), the [Totalsports website](#), the [Due South website](#), the [American Swiss website](#), the [Stems website](#), the [Matrix website](#), the [@home website](#) and all other websites owned and operated by Foschini, including the content and Service(s) available on and through the websites and any page, part or element thereof;
- c) **“Services”** means any services available on or through the Website;
- d) **“User”** means any person who enters or uses the Website;
- e) Reference herein to the singular includes the plural and vice versa; and
- f) Hyperlinks herein to legal documents should be deemed part of these terms and conditions in terms of section 11(3) of the [ECT Act](#). The fact that some or all of the hyperlinks may, from time to time, be non-operational, shall not affect the validity and interpretation of these terms and conditions.

1. GENERAL

The Foschini Group consists of 13 trading divisions, dealing in lifestyle products that range from fashion, jewellery, accessories, cosmetics, sporting and outdoor apparel and equipment to home wares. The Foschini Group trades in over 1 400 stores, making it the foremost specialty retailer in South Africa.

2. ALLOWED USE AND LICENCE

- 2.1 Foschini licenses the User to view, download and print the content of the Website provided that such use is for private, personal, educational and/or non-commercial purposes only.
- 2.2 Content from the Website may not be used or exploited by Users for any commercial or non-private purposes without the prior written consent of Foschini.
- 2.3 Users may only access and browse the Website for legitimate personal or commercial purposes and may not use the Website for:
 - 2.3.1 Harmful purposes;
 - 2.3.2 Illegal purposes;
 - 2.3.3 Disclosing, sharing or publishing material that may be offensive, defamatory, regulated, copyrighted, incorrect, untrue, prohibited, infringing or damaging to any person; and/or
 - 2.3.4 The creation, storage and sending of unsolicited commercial communications.
- 2.4 The caching of the 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 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 Foschini.
- 2.5 If any User uses content from the Website in breach of the provisions detailed herein:
 - 2.5.1 Foschini reserves the right to claim damages from the User;
 - 2.5.2 Foschini reserves the right to institute criminal proceedings against the User; and
 - 2.5.3 Foschini shall not be liable, in any manner whatsoever, for any damage, loss or liability that results 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 Website from any other source shall be directed to the home page of the Website. Links beyond the Foschini home page may only be used with Foschini's prior written consent.
- 2.7 Foschini shall not be liable, in any manner whatsoever, for any damage, loss or liability that results from the use of content, products or Services available from the Website, if such content, products or Services are accessed through a hyperlink not directed at the home page of the Website. Persons who wish to link to pages beyond the home page of the Website without Foschini's prior written consent shall do so at their own risk and indemnify Foschini against any loss, liability or damage that may result from the use of such hyperlinks.
- 2.8 Users may quote small and reasonable amounts of content available from the Website and only if such a quote is placed in inverted commas and acknowledged.
- 2.9 No person may, without the prior written consent of Foschini, frame the Website in any manner whatsoever.
- 2.10 Apart from bona-fide search engine operators and use of the search facility provided on the Website by Users, no person may use or attempt to use any technology or applications (including web crawlers, robots or web spiders) to search, collect or copy content from the Website for any purpose whatsoever, without the prior written consent of Foschini.
- 2.11 E-mail addresses, names, telephone numbers, and fax numbers published on the Website may not be incorporated into any database used for electronic marketing or similar purposes. No permission is given or should be implied that information on the Website may be used to communicate unsolicited communications to Foschini and all rights detailed in section 45 of the [ECT Act](#) are reserved.
- 2.12 All licences 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 Foschini at any time without prior notice or reason.

3. INTELLECTUAL PROPERTY RIGHTS

- 3.1 All intellectual property on the Website, including but not limited to content, trademarks (or any confusingly similar trademarks), trade names, logos, pictures, video, downloads, domain names, patents, design elements, software, source code, meta tags, databases, text, graphics, icons and hyperlinks are the property of or licensed to Foschini and as such, are protected from infringement by domestic and international legislation and treaties. Subject to the rights licensed to the User in [section 2](#), all other rights to intellectual property on the Website are expressly reserved.
- 3.2 No person shall amend, copy, use, decompile and/or reverse engineer the source code of the Website.
- 3.3 No person may use logos, icons, or trademarks from the Website as hyperlinks or for other purposes without Foschini's prior written consent.

4. SOFTWARE AND EQUIPMENT

It is the responsibility of the User to acquire and maintain, at his/her own expense, the necessary computer hardware, software, communication lines and Internet access accounts required to access the Internet and the Website and/or download content from the Website.

5. DISCLOSURES REQUIRED BY SECTION 43 OF THE ECT ACT

Access to and use of the Website may be classified as “*electronic transactions*” as defined in terms of the [ECT Act](#) and therefore Users have the rights detailed in Chapter 7 of the [ECT Act](#) and Foschini has, amongst others, the duty to disclose the following information:

FULL NAME AND LEGAL STATUS	Foschini Limited
REGISTRATION NUMBER	1937/009504/06
PHYSICAL ADDRESS	Stanley Lewis Centre, 340 Voortrekker Road, Parow East, 7500, Cape Town, South Africa
POSTAL ADDRESS	PO Box 6020, Parow East, 7501, Cape Town, South Africa
TELEPHONE NUMBER	+27 21 938 1911
WEBSITE ADDRESS	www.foschinigroup.co.za
E-MAIL ADDRESS	
MEMBERSHIP OF SELF-REGULATORY BODIES	Not Applicable
CODE OF CONDUCT	Not Applicable
PHYSICAL ADDRESS FOR RECEIPT OF LEGAL SERVICE	Stanley Lewis Centre, 340 Voortrekker Road, Parow East, 7500, Cape Town, South Africa
DIRECTORS	Click here to view the Foschini Ltd board of directors
ACCESS TO INFORMATION	Click here to view the Foschini information manual
ALTERNATIVE DISPUTE RESOLUTION	Subject to urgent and/or interim relief, all disputes regarding: i) access and use of the Website; ii) the inability to access the Website; iii) the Services and content available from the Website; or iv) 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.
COMPLAINTS	
COOLING OFF RIGHTS	The cooling-off provisions detailed in section 44 of the ECT Act may apply to the Services available on the Website.

6. CHANGES AND AMENDMENTS

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

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- 6.1 change these terms and conditions;
- 6.2 change the content and/or Service available from the Website;
- 6.3 discontinue any aspect of the Website or Service(s) available from the Website; and/or
- 6.4 change the software and hardware required to access and use the Website.

7. PRIVACY

- 7.1 Foschini 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 Foschini may electronically collect, store and use the following personal information of Users:
 - 7.2.1 name and surname;
 - 7.2.2 area code;
 - 7.2.3 street address;
 - 7.2.4 postal address;
 - 7.2.5 title;
 - 7.2.6 contact numbers;
 - 7.2.7 non-personal browsing habits and click patterns;
 - 7.2.8 e-mail address; and / or
 - 7.2.9 IP address.
- 7.3 Foschini collects, stores and uses the abovementioned personal information for the following purposes:
 - 7.3.1 Communicate requested information to the User;
 - 7.3.2 Provide Services to the User as requested by the User;
 - 7.3.3 Authenticate the User;
 - 7.3.4 Provide the User with access to restricted pages on a Website; and / or
 - 7.3.5 Compile non-personal statistical information about browsing habits, click-patterns, and access to the Website.
- 7.4 Personal 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 Foschini may collect, maintain, save, compile, share, disclose and sell any information collected from Users, subject to the following provisions:
 - 7.5.1 Foschini shall not disclose personal information from Users unless the User consents thereto;
 - 7.5.2 Foschini shall disclose personal information without the User's consent only through due legal process; and
 - 7.5.3 Foschini may compile, use and share any information that does not relate to any specific individual.
- 7.6 Foschini owns and retains all rights to non-personal statistical information collected and compiled by Foschini.

8. HYPERLINKS TO THIRD PARTY SITES

- 8.1 Foschini may provide hyperlinks to websites not controlled by Foschini (“target sites”) and such hyperlinks do not imply any endorsement, agreement on or support of the content, products and/or Services of such target sites.
- 8.2 Foschini does not editorially control the content, products and/or services on target sites and shall not be liable, in any manner whatsoever, for the access to, inability to access, use and inability to use or content available on or through target sites.

9. SECURITY

- 9.1 Foschini shall take all reasonable steps to secure the content of the Website and the information provided by and collected from Users, from unauthorised access and/or disclosure. However, Foschini does not make any warranties or representations that content shall be entirely safe or secure.
- 9.2 Subject to the provisions of sections 43(5) and 43(6) of the [ECT Act](#), if applicable, Foschini is under no legal duty to encrypt any content or communications from and to Users and is also under no legal duty to provide digital authentication of any pages on the Website.
- 9.3 Users may not deliver or attempt to deliver, whether on purpose or negligently, any damaging code, such as computer viruses, robots or spy ware, to the Website or the server and computer network that support the Website.
- 9.4 Notwithstanding criminal prosecution, any person who delivers or attempts to deliver any damaging code to the Website, whether on purpose or negligently, shall, without any limitation, indemnify and hold Foschini harmless against any and all liabilities, damages, risks and losses that Foschini and its partners / affiliates may suffer as a result of such delivery, attempt or damaging code.
- 9.5 Users may not develop, distribute or use any device or programme designed to breach or overcome the security measures of the restricted pages, products and Services on the Website and Foschini reserves the right to claim damages from any and all persons involved, directly and indirectly, in the development, use and distribution of such devices or programmes.
- 9.6 Users who commit any of the offences detailed in sections 85 to 88 of the [ECT Act](#) shall, notwithstanding criminal prosecution, be liable for all resulting liabilities, losses, destruction or damages suffered and/or incurred by Foschini and its partners / affiliates due to or related to these illegal actions.

10. DISCLAIMER AND LIMITATION OF LIABILITY

- 10.1 Subject to the provisions of sections 43(5) and 43(6) of the [ECT Act](#), if applicable, and as far as allowed by law, Foschini (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 Website;
 - 10.1.2 access to and use of the Services;
 - 10.1.3 access to websites linked to the Website;
 - 10.1.4 inability to access the Website or use the Services;
 - 10.1.5 inability to access websites linked to the Website;
 - 10.1.6 content available on the Website;
 - 10.1.7 Services available from the Website; or

- 10.1.8 any other reason not directly related to Foschini's gross negligence.
- 10.2 The Foschini 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 Foschini, that the content available from and through the Website meet the User's individual requirements and is compatible with the User's computer hardware and/or software.
- 10.3 Information, ideas and opinions expressed on the Website should not be regarded as professional advice or the official opinion of Foschini and Users are encouraged to obtain professional advice before taking any course of action related to the information, ideas or opinions expressed on the Website.
- 10.4 Foschini does not make any warranties or representations that content and Services available from the Website shall in all cases be true, correct or free from any errors. Foschini shall take all reasonable steps to ensure the quality and accuracy of content available from the Website.
- 10.5 Foschini does not make any warranties or representations that the Website shall be available at all times. Users acknowledge that the Website may be unavailable due to updates or other causes beyond the reasonable control of Foschini, including, but not limited to, virus infection, unauthorised access (hacking), power failure or other "acts of God."
- 10.6 The Website and the Services are provided "as is" and no warranties, implied or express, are given.

11. REMOVAL AND CORRECTION OF CONTENT

Users are encouraged to report untrue, inaccurate, defamatory, illegal, infringing and/or harmful content available from the Website to Foschini and Foschini undertakes to correct and/or remove such content or any part thereof if the person reporting such content provides 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 Foschini's right to intercept, block, filter, read, delete, disclose and use all communications (including all "data messages" as defined in the [ECT Act](#)) sent or posted by the User to the Website or Foschini's employees.
- 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 These terms and conditions constitute the entire agreement between Foschini and the User and shall take precedence over any disclaimers and/or legal notices attached to any communications and/or postings received by Foschini from the User.
- 13.2 Any failure by Foschini 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 Foschini 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 Website for the first time;
- 14.2 data messages (as defined in the [ECT Act](#)) addressed by the User to Foschini shall only be deemed to have been received if and when responded to;
- 14.3 data messages (as defined in the [ECT Act](#)) addressed to the User by Foschini 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 Foschini 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 are not required for valid electronic communications between the User and Foschini; and
- 14.6 the User agrees and warrants that data messages that are sent to Foschini 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

The Website is hosted, controlled and operated from the Republic of South Africa and therefore, subject to [clause 5](#), the South African law enforced by the South African courts governs the use of, or inability to use, the Website, its content, Services, products and these terms and conditions.

16. LEGAL COSTS

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