



MHEMBWE SAFARI WEBSITE USAGE - TERMS AND CONDITIONS

IN TERMS OF SECTION 11(3) 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 THIS WEBSITE, WEBPAGES, OR ANY PART THEREOF.

DEFINITIONS AND INTERPRETATION

- a) By using this Website you accept the terms and conditions provided in this document.
- b) "Website" means the website located at <https://mhembwesafari.com/> and any sub-domains operated by Mhembwe Safari, including any page, part or element thereof and furthermore all domain names linked to such website;
- c) "Mhembwe" means Mhembwe Safari CC, a closed corporation registered in terms of the laws of South Africa reg. no. 2006/204276/23;
- d) "User" means any person who enters or uses the Mhembwe Safari website;
- e) References herein to the singular include the plural and vice versa; and
- f) Notwithstanding the fact that hyperlinks in these terms and conditions to copyright notices and legislation should be deemed part of these terms and conditions in terms of section 11(3) of the ECT Act, the fact that some or all the hyperlinks may be nonoperational, shall not play a role in determination of the validity and interpretation of these terms and conditions.

1. DISCLOSURES REQUIRED BY SECTION 43 OF THE ECT ACT AND TERMS OF SERVICE

These terms and conditions govern the sale of goods and / or the provision of services from or through this Website. Access to the services, content, software and downloads available from this 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 Mhembwe Safari has, amongst others, the duty to disclose the following information:

Full name and registration number of website owner:

Mhembwe Safari CC, registration number 2006/204276/23

Street address:

24 Balvicar Road
Blairgowrie
Randburg
2195, South Africa

Postal address:

PO Box 787458
Sandton
2146, South Africa

Telephone number: +27 82 562 7333

Email address: info@mhembwesafari.co.za

VAT Registration number: 4110246370

Member: Jif van Zyl.

Domicillium citandi et executandi:

24 Balvicar Road
Blairgowrie
Randburg
2195, South Africa

Services This Website offers, facilitates or enables the following services:

- Lodge Information
- Contact Information
- Mhembwe Safari destination information
- Travel blogs, videos and related information;
- Rack rates & promotions;
- Travel advice;
- Safari planning; and
- Travel enquiries.

Alternative dispute resolution

Subject to urgent and/or interim relief, all disputes regarding:

- access to this Website;
- the inability to access this Website;
- the services and content available from this Website; or
- 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 Johannesburg 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 Client.

2. ALLOWED USE AND LICENSE

- 2.1 Mhembwe Safari licenses the User to view, download and print the content of this Website, provided that such content is used for private, personal, educational and/or noncommercial purposes only;
- 2.2 Content from this Website shall not be used for any commercial and non-private purposes without the prior written consent of Mhembwe Safari;
- 2.3 Users may only access, browse and use this Website for legitimate personal or commercial purposes and may not use this Website or any Mhembwe Safari services and/or products 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, 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 this Website shall only be allowed if:
 - 2.4.1 The purpose of the caching is to make the onward transmission of the content from this 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 Mhembwe Safari.
- 2.5 If any User uses content from this Website in breach of the provisions detailed herein:
 - 2.5.1 Mhembwe Safari reserves the right to claim damages from the User;
 - 2.5.2 Mhembwe Safari reserves the right to institute criminal proceedings against the User; and
 - 2.5.3 Mhembwe Safari shall not be liable, in any manner whatsoever, for any damage, loss, or liability that resulted from the use of such content by the User or any third party who obtained any content from the User.
- 2.6 Mhembwe Safari shall not be liable, in any manner whatsoever, for any damage, loss or liability that resulted from the use of content from this Website, if such content was accessed through a hyperlink not directed at the home page of this Website. Persons that wish to link to content beyond the home page of this Website shall do so at their own risk and indemnify Mhembwe Safari against any loss, liability or damage that may result from the use of content from this Website, if such content was accessed through a hyperlink not directed at the home page of this Website. Mhembwe Safari's non-liability for deep linking considers that deep links bypass these terms and conditions;

- 2.7 Users may quote small and reasonable amounts of content available from this Website only if such quote is placed in inverted commas and acknowledged;
- 2.8 No person may frame this Website, in any manner whatsoever, without the prior written consent of Mhembwe Safari;
- 2.9 Apart from bona-fide search engine operators and use of the search facility provided on this Website by Users, no person may use or attempt to use any technology or applications (including web crawlers or web spiders) to search, collect or copy content from this Website for any purposes, without the prior written consent of Mhembwe Safari;
- 2.10 E-mail addresses, names, telephone numbers, and fax numbers published on this 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 this Website may be used to communicate unsolicited communications to Mhembwe Safari and all rights detailed in Section 45 of the ECT Act are reserved; and
- 2.11 All licenses and/or permissions granted in terms of this clause 1 are provided on a non-exclusive and non-transferable basis and may be terminated or cancelled by Mhembwe Safari at any time without prior notice or giving reasons therefore.

3. INTELLECTUAL PROPERTY RIGHTS

- 3.1 All intellectual property on this Website, including but not limited to content, trademarks, domain names, patents, design elements, software, source code, meta tags, databases, text, graphics, icons and hyperlinks are the property of or licensed to Mhembwe Safari and as such, are protected from infringement by domestic and international legislation and treaties. Subject to the rights licensed to the User in clause 3, all other rights to intellectual property on this Website are expressly reserved; and
- 3.2 No person may use logos, icons, or trade marks from this Website as hyperlinks or other purposes without Mhembwe Safari'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 this Website and/or download content from this Website.

5. CHANGES AND AMENDMENTS

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

- change these terms and conditions;
- change the content and/or services available from this Website;
- discontinue any aspect of this Website or service(s) available from this Website; and/or
- change the software and hardware required to access and use this Website.

6. PRIVACY

- 6.1. Mhembwe Safari 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);
- 6.2. Mhembwe Safari may electronically collect, store and use the following personal information of Users:
 - 6.2.1. name and surname;
 - 6.2.2. contact numbers;
 - 6.2.3. non-personal browsing habits and click patterns;
 - 6.2.4. e-mail address; IP address;
 - 6.2.5. and/or User selected username and password.
- 6.3. Mhembwe Safari collects, stores and uses the abovementioned information for the following purposes:
 - 6.3.1. To communicate requested information to the User;
 - 6.3.2. To provide the User with access to restricted pages on this Website; and
 - 6.3.3. To compile non-personal statistical information about browsing habits, clickpatterns and access to this Website.

- 6.4. Information detailed above is collected either electronically by using cookies or is provided voluntarily by the User. Users may determine cookie use independently through their browser settings;
- 6.5. Mhembwe Safari may collect, maintain and store any information collected from users, however, this information will never be shared or sold; it could, however, be disclosed to a third party if mandated to do so by a legal order from a South African court; and
- 6.6. Mhembwe Safari owns and retains all rights to non-personal statistical information collected and compiled by this Website.

7. HYPERLINKS TO THIRD PARTY SITES

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

8. SECURITY

- 8.1. Mhembwe Safari shall take all reasonable steps to secure the content of this Website and the information provided by and collected from Users from unauthorized access and/or disclosure. However, Mhembwe Safari does not make any warranties or representations that content shall be 100% safe and secure;
- 8.2. Mhembwe Safari is under no legal duty to encrypt any content or communications from and to this Website and is also under no legal duty to provide digital authentication of any page on this Website;
- 8.3. Users may not deliver or attempt to deliver, whether on purpose or negligently, any damaging code, such as computer viruses, to this Website or the server and computer network that support this Website;
- 8.4. Notwithstanding criminal prosecution, any person who delivers any damaging code to this Website, whether on purpose or negligently, shall, without any limitation, indemnify and hold Mhembwe Safari harmless against all liability, damages and losses that Mhembwe Safari and its partners / affiliates may suffer as a result of such damaging code;
- 8.5. Users may not develop, distribute or use any device to breach or overcome the security measures of the Product and Mhembwe Safari reserves the right to claim damages from any persons concerned with a security failure or breach; and
- 8.6. Any User who commits any of the offences detailed in sections 85 to 88 of the ECT Act shall, notwithstanding criminal prosecution, be liable for all resulting liability, loss or damages suffered and/or incurred by Mhembwe Safari and its partners / affiliates.

9. DISCLAIMER AND LIMITATION OF LIABILITY

- 9.1. Subject to the provisions of sections 43(5) and 43(6) of the ECT Act, if applicable, and as far as allowed by law, Mhembwe Safari (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:
 - 9.1.1. access to this Website;
 - 9.1.2. access to websites linked to this Website;
 - 9.1.3. inability to access this Website;
 - 9.1.4. inability to access websites linked to this Website;
 - 9.1.5. content available on this Website;
 - 9.1.6. services available from this Website;
 - 9.1.7. downloads and use of content from this Website;
 - 9.1.8. and/or any other reason not directly related to Mhembwe Safari' gross negligence.
- 9.2. This 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 him or herself, prior to entering into this agreement with Mhembwe Safari, that the content available from and through this Website meets the User's individual requirements and is compatible with the User's computer hardware and/or software;
- 9.3. Information, ideas and opinions expressed on this Website should not be regarded as professional advice or the official opinion of Mhembwe Safari and Users are encouraged to consult professional advice before taking any course of action related to the information, ideas or opinions expressed on this Website;

- 9.4. Mhembwe Safari does not make any warranties or representation that content and services available from this Website will in all cases be true, correct or free from any errors. Mhembwe Safari shall take all reasonable steps to ensure the quality and accuracy of content available from this Website; and
- 9.5. Mhembwe Safari does not make any warranties or representations that this Website shall be available at all times. Users acknowledge that this Website may be unavailable due to updates or other causes beyond the reasonable control of Mhembwe Safari, including, but not limited to virus infection, unauthorised access (hacking), power failure or other "acts of God."

10. REMOVAL AND CORRECTION OF CONTENT

Users are encouraged to report untrue, inaccurate, defamatory, illegal, infringing, and/or harmful content available from this Website to the website administrator and the website administrator undertakes to correct and/or remove such content or any part thereof if the person reporting such content provided reasonable grounds to prove the alleged nature of the content.

11. INTERCEPTION OF COMMUNICATIONS

- 11.1. Subject to the provisions of the Regulation of Interception of Communications (RIC) Act 70 of 2002, the User agrees to Mhembwe Safari's right to intercept, block, filter, read, delete, disclose and use all communications sent or posted by the User to this Website, its staff and employees; and
- 11.2. 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.

12. ENTIRE AGREEMENT AND SEVERABILITY

- 12.1. These terms and conditions constitute the entire agreement between Mhembwe Safari and the User and shall take precedent over any disclaimers and/or legal notices attached to any communications and/or postings received by Mhembwe Safari from the User;
- 12.2. Any failure by Mhembwe Safari to exercise or enforce any right or provision shall in no way constitute a waiver of such right or provision; and
- 12.3. 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.

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

The User and Mhembwe Safari agree that:

- 13.1. the User shall be bound to these terms and conditions and such agreement is concluded in Johannesburg (South Africa) at the time the User enters this Website for the first time;
- 13.2. data messages (as defined in the ECT Act) addressed by the User to Mhembwe Safari shall only be deemed to have been received if and when responded to;
- 13.3. data messages (as defined in the ECT Act) addressed to the User by Mhembwe Safari shall be deemed to be received by the User as detailed in section 23(b) of the ECT Act;
- 13.4. data messages (as defined in the ECT Act) addressed by the User to Mhembwe Safari shall be deemed to have been created and sent by the User from within the geographical boundaries of South Africa;
- 13.5. electronic signatures, encryption and/or authentication is not required for valid electronic communications between the User and Mhembwe Safari; and
- 13.6. the User agrees and warrants that data messages that are sent to Mhembwe Safari from a computer, IP address or mobile device normally used by or owned by the User, was sent and/or authorised by the User personally.

14. APPLICABLE AND GOVERNING LAW

Subject to the arbitration referred to above, this Website is hosted, controlled, and operated from the Republic of South Africa and therefore the South African law enforced by the South African courts governs the use or inability to use this Website, its content, services and these terms and conditions.

15. LEGAL COSTS

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