

Thunda.com Terms and Conditions of Use

Date of last revision : 13 April 2008

Introduction

Welcome to Thunda.com, a website that tracks social activities across South Africa. The services ("Services") provided by the Thunda.com website (the "Website") are operated by Thunda Com (Pty) Ltd (the "Company"). By accessing the Website on www.thunda.com, you (the "User") signify that you have read, understand, accept and agree to abide by the Website's Terms and Conditions of Use.

The use of the Website, the Services and access to photographs and information (the "Content") thereon is subject to these Terms and Conditions of Use. Use of the Website is open to anybody over the age of eighteen years old. Eligibility for specific services, promotions or competitions may vary. Use or access to the Website by anyone under eighteen years old is unauthorised, unlicensed and in violation of these Terms and Conditions of Use. By using the Website, you, the User warrant that you are eighteen years or older.

Editorial Control

The Website contains photographs taken by photographers contracted by the Company. The Company endeavours to screen photographic material appearing on the website. Any offending photographic material will readily be removed upon request. Inquiries and requests should be directed to photos@thunda.com.

This Website also contains content provided by third parties and hyperlinks to other websites. The Company does not screen or filter such content on these websites or information available from other websites for accuracy, appropriateness, completeness, privacy policies and other policies and therefore does not accept any liability for defamatory, illegal or criminal content contained on other websites. We encourage our users to report any infringement, illegal or criminal content found on any of the websites available through links from the Thunda.com Website in order for us to investigate whether such links should be removed.

User Content

The Website may provide the opportunity for Users to upload their own content or other



content (“User Content”). Where applicable, Users agree not to upload, post, transmit, share, store or otherwise make available content that would constitute, encourage or provide instructions for a criminal offense, violate the rights of any party, or that would otherwise create liability or violate any South African or international law.

Users also agree not to upload, post, transmit, share, store or otherwise make available content that, in the sole judgment of Company, is objectionable or which restricts or inhibits any other person from using or enjoying the Website, or which may expose the Company or its Users to any harm or liability.

Users agree not to upload any User Content that :

1. is abusive, deceptive, pornographic, obscene, defamatory, slanderous, offensive, or otherwise inappropriate
2. comprises copyrighted material used without the express permission of the owner;
3. violates or otherwise encroaches on the rights of others;
4. contains viruses, worms, corrupt files, Trojan horses or other forms of corruptive code, or any other content (collectively “Corruptive Code”) that may compromise the Website, the Content or the Services;
5. harms anyone, including minors;
6. advocates illegal activity; or,
7. provides a link to any of the above.

User Conduct

All Users agree to use the Website, the Services and the Content in a lawful manner and agree not to act in a manner that could disable, overburden, damage or impair the Website or that could demean or harm any person, organization or advertiser. The use of automated scripts to gather content or collect information is strictly prohibited and by using the Website, By accessing the Website, its Content or its Services, Users agree to be bound by these Terms and Conditions of Use.

Users agree not to use the Website to engage in harmful, threatening, defamatory, abusive, inflammatory, harassing, vulgar, obscene, fraudulent, unlawful, privacy invasive, hateful, racist or otherwise objectionable behaviour.

Users agree not to create more than one account or to register accounts on behalf of other people. Users agree that accounts may only be set up in their own names and not in the



names of their organisations and affiliate institutions.

Users also hereby agree not to impersonate someone else or to misrepresent their own identity through the Website.

Distribution of Content

The Website provides a service whereby Users can email Content to other people as well as share photographs on Facebook through a Thunda.com Application on Facebook.

Notwithstanding this service, the Company specifically retains ownership and copyright to each and every photograph and their commercial distribution, reproduction, publication, adaptation, sale, either in part or whole, online, in print, or any cinematograph film, video film or television broadcast, requires the prior written permission of the Company. By making these photographs available to the Users, the Company is in no way whatsoever assigning its rights, title and interest including copyright to the photographs throughout the world and in perpetuity.

Content Sharing on Facebook

The Company provides a service whereby photographs and galleries appearing on the Website can be shared on Facebook. Users may avail themselves of this service subject to their adherence of these Terms and Conditions of Use as well as the Terms of Use of Facebook.

In order to upload or share Thunda.com photographs on Facebook, the User may not in any way tamper or alter the photograph, including the deletion of the Thunda.com logo or the logo of any of its advertisers or partners.

Furthermore, Users agree not to share photographs or galleries that could in any way harm or demean a person, organization or advertiser, that could contravene these Terms and Conditions of Use or that could contravene the rights of any entity upheld in terms of the Company's Privacy Policy.

For the avoidance of any doubt, Users are required to strictly adhere to these Terms & Conditions of Use in the sharing of Content through the Thunda.com Application on Facebook.



Privacy

The Company respects the privacy of its Users and it takes specific steps to protect it. Please review our Privacy Policy.

The purpose of the Website is to display photographs of people having fun with their friends. It is never the Company's intention to depict anybody in a negative light. If for any reason whatsoever you would like a photograph deleted from the Website or you feel as though a particular photograph is offensive and should be removed from the Website, please send your photo deletion request to photos@thunda.com and we will oblige.

Limitation of Liability & Disclaimer

Although the Company endeavours to provide accurate, up to date and truthful Content on the Website, neither the Company nor any of its subsidiaries, affiliates, directors, shareholders, officers, agents, contractors, partners, employees, suppliers, information providers, licensors and service providers make any representations or give any warranties, whether expressly, tacitly or implied, as to the operation of the Website, the Services or the Content, User Content, software, applications, advertising and products included and / or available from the Website.

The Company, its subsidiaries, affiliates, directors, shareholders, officers, agents, contractors, partners, employees, suppliers, information providers, licensors and service providers will not be responsible or liable for any damage or loss of whatsoever nature, including but not limited to personal injury or death, direct, indirect, incidental, exemplary, special, punitive and consequential damages, including that for lost profits or lost data and refusal or inability of the competition sponsor to deliver the prizes, arising or resulting from the use of or inability to use the Website, the Services, the Content, User Content, software, applications, advertising and products, prizes or any interactions between Users of the Website, whether online or offline.

The Company is not responsible for any technical malfunctions or other problems of any telephone network or service, computer systems, servers or service providers, computer or mobile telephone equipment, software, failure of email due to technical problems or traffic congestion on the Internet or at any website or any combination thereof, including injury or damage to the User's or to any other person's computer, mobile phone or other hardware or software, related to or resulting from using or downloading materials in connection with the internet and / or related to the use of the Website.



The Website, the Services, Content, User Content, software, applications, advertising and products are provided “as is” and the Company hereby disclaims any and all representations and warranties, whether express or implied, including without any limitation whatsoever any implied warranties of ownership, title, suitability for a particular purpose or non-infringement.

The Company cannot guarantee nor does it warrant or promise any specific results of benefits from the use of the Website. Furthermore, the Company does not represent or warrant that the Website, the Services, Content, User Content, software, applications, advertising and products or any applications associated with it, are accurate, complete, reliable, current or free of error or that the Website, its Services, its software, its applications or its servers are free of viruses or other harmful components.

Users should therefore exercise caution in the use and downloading of any applications, software or Content and should utilize industry recognized software to detect and disinfect any viruses.

Users understand and agree that any Content, User Content, application, software or advertising that they download or otherwise obtain through the Website is at their own discretion and risk and that they are solely responsible for the use thereof and any damage whatsoever that may result, including but not limited to the use of this Content on Facebook or any other website.

Notwithstanding anything to the contrary contained herein, the Company's liability to the User for any cause whatsoever, regardless of the form or nature of the claim or action, will at all times be limited to the amount paid by the User, if any, to the Company for the Services, but in no case will the Company's liability exceed R1,000 (one thousand Rand).

By utilizing this Website the User acknowledges that if no fees have been paid by the User to the Company for the use of the Website, Services or Content, the User shall be limited to injunctive relief only, unless otherwise permitted by law, and the User shall not be entitled to damages of any kind from the Company, regardless of the cause of the action.

Users agree to indemnify and hold the Company, its subsidiaries, affiliates, directors, shareholders, officers, agents, contractors, partners, employees, suppliers, information providers, licensors and service providers, harmless from and against any loss, liability, claim, demand, damages, costs and expenses, including reasonable attorney's fees, arising out of or in connection with any Content, User Content, applications, software or advertising Users post or share on or through the Website (including without limitation through the Thunda.com



Application on Facebook), the Users' use of the Services or the Website, the Users' conduct in connection with the Website, the Services or the Content or with other Users of the Website, Services or Content, or any violation of this Agreement or of any law or the rights of any third party.

Users agree to indemnify, defend and hold harmless the Company, its subsidiaries, affiliates, directors, shareholders, officers, agents, contractors, partners, employees, suppliers, information providers, licensors and service providers against any and all losses, claims, liabilities, expenses, damages and costs, including reasonable Attorney's fees, resulting from any violation of these Terms and Conditions of use or any activity relating to the Website, Services or Content including but not limited to negligent and wrongful conduct by the User or any other person accessing the Website, Services or Content by using another User's account.

To the fullest extent permitted by the law, the Company, its subsidiaries, affiliates, directors, shareholders, officers, agents, contractors, partners, employees, suppliers, information providers, licensors and service providers will have no obligation or liability, whether arising in contract, warranty, negligence, product liability or otherwise, for any direct, incidental, indirect, special or consequential damages or liabilities (including any loss of data, revenue or profit) arising from the use of the Website, its Content or its Services, even if the Company has been advised of the possibility of such damages.

This limitation applies to damages arising from (a) the use or inability to use the Website, Content or Services (b) the cost of the procurement of substitute services (c) unauthorized access to or the alteration of a User's transmission by third parties (d) third party content made available to the User through the Website (e) any other matter relating to the Website, Content or Services.

The Website, Content and the Services may be unavailable from time to time for maintenance or other reasons. The Company assumes no responsibility for any error, omission, interruption, deletion, defect or delay in the operation of the Website or the delivery of its Content or the transmission of its Services.

Competition Eligibility

Employees of the Company, its advertising and promotions' agencies and immediate families are not eligible for entry into competitions. Certain competitions may only be open to legal South African residents, over the age of eighteen.



Competition Rules

- Entry to all competitions hosted on the Website are subject to these Terms and Conditions of Use, the Privacy Policy and the Rules of each competition.
- Unless otherwise specified, each person may only submit only one entry per competition.
- Entries submitted through the use of macros, scripts or any automated means are ineligible.
- Competition entrants may be provided with the opportunity to increase their chances of winning through referring other eligible persons to a specific competition.
- Competition entries are logged when received by the Company and not when sent by entrants.
- The Company does not bear responsibility for entries lost through negligence, mistakes, omissions, interruptions, deletion of files, errors, defects, delays in operation or transmission or any failure of performance, whether or not limited to acts of God, communication failure, theft, destruction or unauthorised access to our host's records, programmes or services.
- Competition entries must be received within the specified dates and times.
- Specified dates and times are subject to change at the Company's discretion.
- The judges' decision is final and no correspondence will be entered into.

Drawing

- All entries with the correct answer(s) to the competitions' qualifying question(s) will be included in the draw.
- Additional entries, accrued through successful referrals to competitions, will be included in the draw.
- The draw is made randomly from all correct entries.
- For competitions that accept postal and internet entries, prizewinners will be selected randomly from a pooling of all entries.

Notification

- Prize-winners will be notified by email or telephone. In the event of email being undeliverable to the address recorded in the Website's registration form or entry form or an email being unanswered, the Company reserves the right to draw other prizewinners once reasonable attempts to contact the prize-winners have been made. Website registrants are therefore required to make sure that the email address and telephone



number in the Website registration form or entry form are current.

- Prize-winners may be posted on the Website.
- Upon notification, prize-winners may be required to sign an affidavit confirming their personal information.
- Entry into a competition confers upon the Company, its clients and/or appointed agents, permission to use the prize-winner's name, likeness and voice for purposes of promotion or publicity without additional compensation.
- Winners for a specific competition can also be requested by sending a self-addressed and stamped envelope to Thunda.com, PO Box 528, Green Point, 8051.

Submissions

The User acknowledges and agrees that any questions, comments, suggestions, ideas, feedback or other information about the Website or the Services ("Submissions"), provided to the Company are non-confidential and shall become the sole property of Company. The Company shall own exclusive rights, including all intellectual property rights, and shall be entitled to the unrestricted use and dissemination of these Submissions for any purpose, commercial or otherwise, without acknowledgment or compensation to the User.

Registrant information

In order to avail of certain services provided by the Website, Users are required to register. Registrants on the website hereby agree (1) to provide current, accurate and complete information (2) to maintain the currency of this information (3) to secure their passwords (4) to take full responsibility for any actions taking place using their accounts.

Termination of Registration

The Company may, at any time and at its sole discretion, with or without notice, terminate your membership (or any part thereof), delete your profile and any content or information that you have posted on the Website and / or prohibit you from using or accessing the Website or any portion, aspect or feature of the Website for any reason (including conduct that violates the Terms and Conditions of Use or other policies of the Company, conduct that is harmful to other Website users, harmful to the Company), or for no reason, including without limitation if it believes that you are under 13, or under 18 or abusing the Website or its Services.



Governing Law

This website is created, hosted, maintained and controlled in the Republic of South Africa and as such the laws of the Republic of South Africa and the jurisdiction of the South African Court govern this user agreement and the use or inability to use the Website.

Arbitration

Disputes arising from the use of this website shall be referred to arbitration in terms of the Rules of Expedited Arbitration of the Arbitration of the Arbitration Foundation of Southern Africa (AFSA), where such Arbitration will take place in Cape Town, South Africa.

The User and the Company agree that, except as may otherwise be provided for in any specific terms applicable to specific services on the Website, the sole and exclusive remedy for any and all disputes relating to or arising out of use of the Website, its Services, its Content or from these Terms and Conditions of Use, shall be final and binding arbitration, except to the extent that the Company or User has in any manner infringed upon or violated or threatened to infringe upon or violate the other party's patent, copyright, trademark or trade secret rights, or the User has violated any of the Terms and Conditions of then the parties acknowledge that arbitration is not an adequate remedy at law and that injunctive or other appropriate relief may be sought.

To the fullest extent permitted by governing law, no arbitration or claim under these Terms and Conditions of use shall be joined to another arbitration or claim and no class arbitration shall be permitted. In no instance shall any claim, action or proceeding by the User related in any way to the Website, or the Content or the Services (including your visit to or use of the Website, or Content or Services) be instituted more than three (3) years after the cause of action arose.

With respect to any disputes or claims not subject to arbitration, you agree not to commence or prosecute any action in connection therewith other than in courts of Cape Town, South Africa.

Copyright

Copyright © 2007 Thunda Com (Pty) Ltd, 72 Canterbury Street, Zonnebloem, 8001. All rights reserved.



Trademarks

The Company's trademarks, domains and / or logo may not be used in any manner, either in whole or in part, including as part of trademarks and domains that may cause confusion.

Intellectual Property Rights

All the content on the Website, including photographs, text, graphics, logos, icons, designs, colours, layout and trademarks are the intellectual property of the Company or licensed to the Company and its associates and as such are protected by South African and International Intellectual Property Law.

No content may be copied, edited, distributed, reproduced, published, transmitted, displayed, modified or sold in any form, by any means, in whole or in part, without the Company's prior written permission.

Unauthorized use of the Website's content may violate applicable laws including copyright and trademark laws. Nothing in these Terms and Conditions of Use should be construed as conferring any licence to the Company's intellectual property rights, by estoppel, implication or otherwise.

Changes

The Company reserves the right, at its sole discretion to make changes, modifications, additions or deletions to these Terms and Conditions of Use at any time without notice. If changes are made, the date of last revision will be updated at the top of this page. The continued use of the Website after such changes constitute the Users' acceptance of the revised Terms and Conditions of Use. If Users do not agree to abide by these Terms and Conditions, they should stop using the Website. It is the responsibility of Users to regularly check the Terms and Conditions of the Website to review any changes that may have been made.

Usage

These Terms and Conditions of Use constitute the entire agreement between the User and the Company with respect to the use of the Website, the Content and the Services and supersede any prior agreements between the User and the Company relating to the User's use of the Website, Content or Services. The failure of the Company to exercise or enforce



any right or provision of these Terms and Conditions of Use shall not constitute a waiver of such right or provision in that or in any other instance. If any provision of this Agreement is held invalid, the remainder of this Agreement shall continue in full force and effect. If any provision of these Terms and Conditions of Use is deemed to be unlawful, void or for any reason unenforceable, then that provision shall be deemed severable from these Terms of Use and shall not affect the validity and enforceability of any remaining provisions.

User Waiver

By viewing the Website, Users may be exposed to Content that they consider to be offensive. Users take sole responsibility for such exposure.

Reporting Violations

Please report an abuse of the Website, the Content or Services to abuse@thunda.com.

