

GENERAL TERMS AND CONDITIONS OF SERVICE

(Last updated 30 November 2018)

www.hellochoice.co.za and www.hellochoice.net, hereafter referred to interchangeably as “the Site”, which includes the App, is owned and operated by FreshTrades Trading Solutions (Pty) Ltd, Registration Number: 2018/330942/07 (incorporated in the Republic of South Africa) (“us/we/our/ourselves”). **WE OPERATE AS AN INDEPENDENT TRADING PLATFORM AND WE ARE NOT AGENTS ACTING ON BEHALF OF ANY THIRD PARTY.**

Please read our [Privacy Policy](https://www.hellochoice.co.za/privacypolicy) carefully (to be found at <https://www.hellochoice.co.za/privacypolicy>). Every User of the Site is deemed to have read, considered, reconciled him/her/it-self with, and agreed to these General Terms and Conditions of Service, the [Buyer Terms](#), the [Seller Terms](#) and [Privacy Policy](#).

PLEASE READ THESE GENERAL TERMS AND CONDITIONS OF SERVICE CAREFULLY AS THEY CONTAIN IMPORTANT INFORMATION REGARDING YOUR LEGAL RIGHTS, REMEDIES AND OBLIGATIONS. THESE INCLUDE VARIOUS LIMITATIONS AND EXCLUSIONS, OBLIGATIONS, APPLICABLE LAWS AND REGULATIONS.

1. LEGALLY BINDING AGREEMENT

- 1.1. If you accept or agree to these General Terms and Conditions of Service (“General Terms”) for or on behalf of a company or other legal entity, you represent and warrant that you have the authority to bind that company or other legal entity to these General Terms and, in such event, “you”, “yourself” and “your” will refer and apply to that company or other legal entity.
- 1.2. These General Terms are specific terms agreed by you and must be read and understood in conjunction with the Buyer Terms and the Seller Terms for the Site. In the event of any conflict between these [General Terms](#) and the [Buyer Terms](#) or the [Seller Terms](#) then the provisions of those Buyer/Seller Term documents shall prevail.

2. DEFINITIONS

- 2.1. “**the App**” means the Site downloadable mobile application, which concept is included in the concept of “the Site” as defined below. The App is an online marketplace which is available to Members and accessed by means of mobile devices such as smartphones and tablets. Both the Site and the App are subject to these General Terms, the Buyer Terms, the Seller Terms and the Privacy Policy, with the necessary changes.
- 2.2. “**BID Sale**” means a legally binding sale transaction concluded between ourselves and the Buyer, which is achieved upon the conclusion of a bidding process in terms of which the sale lot is awarded to the successful bidder who is then termed “the Buyer”;
- 2.3. “**BIN Sale**” means a buy-it-now legally binding sale transaction concluded between ourselves and the Buyer. A BIN Sale is a regular offer-and-acceptance, purchase-and-sale transaction of a Lot by the Buyer.
- 2.4. “**Buyer**” or “**Buyers**” means a Member who buys Products on a BID Sale and/or BIN Sale basis on the Site or the App.
- 2.5. “**Buyer Terms**” means the terms applicable to Buyers’ use of the Site, as published on the Site, and as amended from time to time.

- 2.6. **“Collective Content”** means your Member Content and our FreshTrades Content.
- 2.7. **“Content”** means text, graphics, images, music, software, audio, video, information or other materials.
- 2.8. **“FreshTrades”** means Freshtrades Trading Solutions (Pty) Ltd, registration number 2018/330942/07. In these General Terms, the Buyer Terms, the Seller Terms and the Privacy Policy, FreshTrades is referred to as “we”, “us”, “our” and/or “ourselves”.
- 2.9. **“Site Account”** or **“Account”** means the facilities, functions and related data made available to Users via the Site and App under the terms prescribed in these General Terms.
- 2.10. **“FreshTrades Content”** means all Content that FreshTrades makes available on or through the Site, including any Content licensed from a third party, but shall not include a Member’s Content.
- 2.11. **“General Terms”** means these General Terms and Conditions of Service, read with the Buyer Terms, the Seller Terms and the Privacy Policy, which govern the use of the Site and transactions facilitated thereby.
- 2.12. **“Listing”** means the process and result of advertising a Lot or Lots for sale on a Bid Sale and/or Buy-It-Now Sale basis.
- 2.13. **“Lot”** or **“Lots”** means any good and/or group of Products sold or offered for sale as a unit and identified as such.
- 2.14. **“Member”** means a User which accesses the Site and completes our Site account registration process which is required to become a Member.
- 2.15. **“Member Content”** shall refer to Content, which is uploaded, or otherwise posted by a Member, and in terms of which, a Member either owns, or has a valid license in respect of same.
- 2.16. **“our margin”** means the margin that we shall receive and retain, from the sale amount paid, for concluding the BID Sale and/or BIN Sale based on the Seller Margin Table contained in the Seller Terms, as amended from time to time.
- 2.17. **“Payment”** means the act of paying FreshTrades for the Products acquired by the Buyer on a Bid Sale and/or Buy-It-Now Sale basis recognized as such once the money is fully recognised and recorded in the FreshTrades bank account.
- 2.18. **“Privacy Policy”** means the privacy terms applicable to a User’s use of the Site, as published on the Site, and as amended from time to time
- 2.19. **“Products”** means and goods listed and bought on the Site on a BID Sale and/or BIN Sale basis.
- 2.20. **“Sales Transaction”** or **“Sale Transactions”** means the purchase of Products by way of BID and/or BIN Sales using the functions and facilities provided to Members through the Site.
- 2.21. **“Seller”** or **“Sellers”** means a Member who sells Products on a consignment stock trading arrangement basis by listing his/her/its Products as Lots on the Site.
- 2.22. **“Seller Terms”** means the terms applicable to Sellers’ use of the Site, as published on the Site, and as amended from time to time.
- 2.23. **“the Site”** means the online marketplace using software business processes and related technology which facilitates BID Sale and/or BIN Sale transactions between ourselves and Members, and includes the App, as defined above. The Site manages and disseminates related Collective Content. Both the Site and the App are subject to these General Terms, the Buyer Terms, the Seller Terms and the Privacy Policy, with the necessary changes.

- 2.24. "User" means a person and/or company which accesses the Site.
- 2.25. "we", "us", "our" and/or "ourselves" means FreshTrades Trading Solutions (Pty) Ltd.
- 2.26. "you", "yourself" and/or "yourselves" means a User or a Member (Buyer or a Seller).

3. YOUR USE OF THE SITE

- 3.1. By using the Site, you agree to comply with, and are legally bound by these General Terms, whether or not you become a Member.
- 3.2. These Terms govern your access to and use of the Site and constitute a binding legal agreement between you and us.
- 3.3. If you do not agree to these Terms, you have no right to obtain information from or otherwise continue using the Site. Failure to use the Site in accordance with these Terms may subject you to civil and/or criminal penalties.
- 3.4. Sale Transactions concluded through the Site are conducted directly with us on a BID Sale or BIN Sale basis for Products acquired by us from Sellers on a consignment stock basis.
- 3.5. By using this Site, you understand and agree that we operate as an independent trading platform on a consignment stock basis and we are not agents acting on behalf of any third party.

4. MODIFICATION

- 4.1. We reserve the right, at our sole discretion, to modify the Site or to modify these General Terms, including the Seller Terms and Buyer Terms, at any time and without prior notice. If we modify these Terms, we will post the modification on the Site and update the "Last Updated Date" at the top of these Terms.
- 4.2. By continuing to access or use the Site after we have posted a modification on the Site, you indicate that you agree to be bound by the modified terms. If the modified terms are not acceptable to you, your recourse is to cease and desist from using the Site.

5. ELIGIBILITY

- 5.1. The Site is intended solely for persons who are 18 years of age or older. Any access to or use of the Site by anyone under 18 is expressly prohibited. By accessing or using the Site you represent and warrant that you are 18 or older.

6. HOW THE SITE WORKS

- 6.1. The Site can be used by Sellers to sell Products to us on a consignment stock trading arrangement basis. The Sellers Products will be listed as Lots for sale on a BID Sale and/or BIN Sale basis on the Site.
- 6.2. The Site can be used to conclude BID Sale and/or BIN Sale transactions between Buyers and us.
- 6.3. Users may view the Site without registering as a Member; however, if a User wishes to transact on the Site, such User must first register as a Member.
- 6.4. We reserve the right to decline to register a User as a Member on the Site, and may we revoke all Member rights at our sole discretion.

6.5. We make no warranties or representation regarding the condition, quality, standard, safety, legality or suitability of any Listings and/or Lots, and the Buyer takes full responsibility to familiarize themselves with the Products available for sale on the Site.

6.6. Ownership rights pass from the Seller to the Buyer upon payment in respect of a BID Sale and/or BIN Sale transaction.

6.7. The risk in the Products passes from the Seller to the Buyer at the moment that such Products are loaded onto the Buyer's transport or a transporter appointed or acting under the Buyer's instruction.

7. **INSURANCE**

It is the Buyer's sole responsibility to arrange required insurance for the Products in transit and we carry no risk or liability for the loading, transport and/or delivery.

8. **LEGALITY**

We will under no circumstances check, or be responsible to ensure the legality of the Listing and/or Lots, nor will we be held responsible for any illegal movement of Products.

9. **NO ENDORSEMENT**

9.1. We do not endorse any Member.

9.2. Members are required to provide accurate information, and although we may undertake additional checks and processes designed to help verify or check the identities or backgrounds of Users, we do not make any representations about, confirm, or endorse any Member or the Member's purported identity or background.

9.3. Any references in the Site to a Member being "verified" or "connected" (or similar language) only indicates that the Member has completed a relevant verification process, and does not represent anything further. Any such description is not an endorsement, certification or guarantee by us about any Member, including the Member's identity and whether the Member is trustworthy, safe, suitable or responsive. Instead, any such description is intended to be useful information for you to evaluate when you make your own decisions about the identity and suitability of others whom you contact or interact with via the Site. We therefore recommend that you always exercise due diligence and care when deciding to conclude any sale transactions, or to have any other interaction with any other Member.

9.4. By using the Site you agree that any legal remedy or liability that you seek to obtain for actions or omissions of other Members or other third parties will be limited to a claim against the particular Members or other third parties who caused you harm. You agree to fully indemnify us and not to attempt to impose liability on or seek any legal remedy from us with respect to such actions or omissions.

10. **TAXES**

10.1. Tax laws or regulations may require us to collect appropriate tax information from Members. We reserve the right to request all required VAT and tax certificates of registration as deemed appropriate. We

reserve the right in our sole discretion to freeze all payouts to you until resolution, to withhold such amounts as required by law, or to do both.

- 10.2. We cannot and do not offer tax-related advice to any Member. You understand and agree that you are solely responsible for:
 - 10.2.1. determining your applicable Tax reporting requirements;
 - 10.2.2. determining the Taxes that should be included, and for including Taxes to be collected or to be paid by you;
 - 10.2.3. remitting to the relevant authority any Taxes included or received by you.

11. **USER CONDUCT**

- 11.1. In connection with your use of the Site you may not, and you agree that you will not:
 - 11.1.1. violate any local, provincial, national, or other law or regulation, or any order of a court;
 - 11.1.2. use manual or automated software, devices, scripts, robots or other means or processes to access, "scrape," "crawl" or "spider" any web pages or other services contained in the Site;
 - 11.1.3. use the Site for any commercial or other purposes that are not expressly permitted by these General Terms;
 - 11.1.4. copy, store or otherwise access any information contained on the Site for purposes not expressly permitted by these Terms;
 - 11.1.5. infringe our rights or the rights of any other person or entity, including without limitation, their intellectual property, privacy, publicity or contractual rights;
 - 11.1.6. interfere with or damage our Site, including, without limitation, through the use of viruses, cancel bots, D Dos attacks, Trojan horses, harmful code, flood pings, denial-of-service attacks, packet or IP spoofing, forged routing or electronic mail address information or similar methods or technology;
 - 11.1.7. use the Site to transmit, distribute, post or submit any information concerning any other person or entity, including without limitation, photographs of others without their permission, personal contact information or credit, debit, calling card or account numbers;
 - 11.1.8. use the Site in connection with the distribution of unsolicited commercial email ("spam") or advertisements;
 - 11.1.9. "stalk" or harass any other User of the Site or collect or store any personally identifiable information about any other User other than for purposes of transacting with us ;
 - 11.1.10. register for more than one Site Account or register for a Site Account on behalf of an individual other than yourself;
 - 11.1.11. contact any other User and/or Member for any purpose other than asking a question related to a Listings and/or Lot;
 - 11.1.12. recruit or otherwise solicit any other Member to join third party services or websites that are competitive to the Site, without our prior written approval;
 - 11.1.13. impersonate any person or entity, or falsify or otherwise misrepresent yourself or your affiliation with any person or entity;
 - 11.1.14. use automated scripts to collect information from or otherwise interact with the Site;

- 11.1.15. use the Site to find another Member and then complete a sales transaction independent of the Site, or ourselves , in order to circumvent the obligation to pay our margin or any fees related to your use of the Site or for any other reasons;
- 11.1.16. post, upload, publish, submit or transmit any Content that:
 - 11.1.16.1. infringes, misappropriates or violates a third party's patent, copyright, trademark, trade secret, moral rights or other intellectual property rights, or rights of publicity or privacy;
 - 11.1.16.2. violates, or encourages any conduct that would violate, any applicable law or regulation or would give rise to civil liability;
 - 11.1.16.3. is fraudulent, false, misleading or deceptive;
 - 11.1.16.4. is defamatory, obscene, pornographic, vulgar or offensive;
 - 11.1.16.5. promotes discrimination, bigotry, racism, hatred, harassment or harm against any individual or group;
 - 11.1.16.6. is violent or threatening or promotes violence or actions that are threatening to any other person; or
 - 11.1.16.7. promotes illegal or harmful activities or substances;
- 11.1.17. systematically retrieve data or other content from our Site to create or compile, directly or indirectly, in single or multiple downloads, a collection, compilation, database, directory or the like, whether by manual methods, through the use of bots, crawlers, or spiders, or otherwise;
- 11.1.18. use, display, mirror or frame the Site, or any individual element within the Site, FreshTrades' name, any FreshTrades' trademark, logo or other proprietary information, or the layout and design of any page or form contained on a page in the Site, without our express written consent;
- 11.1.19. attempt to probe, scan, or test the vulnerability of any our system or network or breach any security or authentication measures;
- 11.1.20. avoid, bypass, remove, deactivate, impair, descramble, or otherwise circumvent any technological measure implemented by us or any other third party (including another User) to protect the Site;
- 11.1.21. forge any TCP/IP packet header or any part of the header information in any email or newsgroup posting, or in any way use the Site to send altered, deceptive or false source-identifying information;
- 11.1.22. attempt to decipher, decompile, disassemble or reverse engineer any of the software used to provide the Site; or
- 11.1.23. advocate, encourage, or assist any third party in doing any of the foregoing.
- 11.2. We have the right to investigate and prosecute violations of any of the above to the fullest extent of the law.
- 11.3. We may access, preserve and disclose any of your information if required to do so by law, or if we believe that it is reasonably necessary:
 - 11.3.1.1. to respond to claims asserted against us;
 - 11.3.1.2. to comply with legal process (for example, subpoenas or warrants);
 - 11.3.1.3. to enforce or administer our agreements with Users;

- 11.3.1.4. for fraud prevention, risk assessment, investigation, product development and de-bugging purposes; and/or
- 11.3.1.5. to protect the rights, property or safety of other Users, Members, the public or ourselves.
- 11.4. You acknowledge that we have no obligation to monitor your access to or use of the Site , but we have the right to do so for the purpose of operating and improving the Site (including without limitation for fraud prevention, risk assessment, and investigation), to ensure your compliance with these General Terms, to comply with applicable law or the order or requirement of a court, administrative agency or other governmental body, to respond to content that we determines is otherwise objectionable or as set forth in these General Terms. We reserve the right, at any time and without prior notice, to remove or disable access to the Site if we, in our sole discretion, consider your conduct to be objectionable for any reason, in violation of these terms or otherwise harmful to the Site or ourselves.

12. **COPYRIGHT & OWNERSHIP**

- 12.1. You acknowledge and agree that the Site, including all associated intellectual property rights, are our exclusive property.
- 12.2. You will not remove, alter or obscure any copyright, trademark, service mark or other proprietary rights notices incorporated in or accompanying the Site.

13. **SITE CONTENT AND MEMBER CONTENT LICENSE**

- 13.1. Subject to your compliance with the terms and conditions of these Terms, we grant you a limited, non-exclusive, non-transferable license, to:
 - 13.1.1. access and view any Site Content solely for your personal and non-commercial purposes; and
 - 13.1.2. access and view any Content to which you are permitted access, solely for commercial purposes as envisaged and permitted by these Term.
- 13.2. You have no right to sublicense the license rights granted in this section.
- 13.3. You will not use, copy, adapt, modify, prepare derivative works based upon, distribute, license, sell, transfer, publicly display, publicly perform, transmit, broadcast or otherwise exploit the Site, except as expressly permitted hereby.
- 13.4. No licenses or rights are granted to you by implication or otherwise under any intellectual property rights owned or controlled by us.

14. **MEMBER CONTENT**

- 14.1. We may, in our sole discretion, permit you to post, upload, publish, submit or transmit Member Content. By making available any Member Content on or through the Site, you hereby grant to us a worldwide, irrevocable, perpetual, non-exclusive, transferable, royalty-free license, with the right to sublicense, to use, view, copy, adapt, modify, distribute, license, sell, transfer, publicly display, publicly perform, transmit, stream, broadcast, access, view, and otherwise exploit such Member Content on, through, by means of, or to promote or market the Site (subject to the Privacy Policy). We do not claim any ownership rights in any

such Member Content and nothing in these Terms will be deemed to restrict any rights that you may have to use and exploit any such Member Content.

14.2. You acknowledge and agree that you are solely responsible for all Member Content that you make available through the Site. Accordingly, you represent and warrant that:

14.2.1. you either are the sole and exclusive owner of all Member Content that you make available through the Site or you have all rights, licenses, consents and releases that are necessary to grant to us the rights in such Member Content, as contemplated under these Terms; and

14.2.2. neither the Member Content nor your posting, uploading, publication, submission or transmittal of the Member Content or our use of the Member Content (or any portion thereof) on, through or by means of the Site will infringe, misappropriate or violate a third party's patent, copyright, trademark, trade secret, moral rights or other proprietary or intellectual property rights, or rights of publicity or privacy, or result in the violation of any applicable law or regulation.

15. **LINKS**

15.1. The Site may contain links to third party websites or resources. You acknowledge and agree that we are not responsible or liable for:

15.1.1. the availability or accuracy of such websites or resources; or

15.1.2. the content, products, or services on or available from such websites or resources.

15.2. Links to such websites or resources do not imply any endorsement by us of such websites or resources or the content, products, or services available from such websites or resources.

15.3. You acknowledge sole responsibility for and assume all risk arising from your use of any such websites or resources or the Content, products or services on or available from such websites or resources.

16. **SUSPENSION, TERMINATION AND SITE ACCOUNT CANCELLATION**

16.1. We may, in our discretion and without liability to you, with or without cause, with or without prior notice and at any time, decide to limit, suspend, deactivate or cancel your Site account.

16.2. If we exercise our discretion under these Terms to do so, any or all of the following can occur with or without prior notice or explanation to you:

16.2.1. your Site account will be deactivated or suspended, your password will be disabled, and you will not be able to access the Site, your Site account, your Member Content, or receive assistance from us;

16.2.2. any pending Sale Transactions will be immediately terminated;

16.2.3. we may communicate to our Members that a potential or confirmed sales transaction has been cancelled.

16.3. You may cancel your Site account at any time via the "Cancel Account" feature of the Site or by sending an email to cancelaccount@hellochoice.co.za. Please note that if your Site account is cancelled, we do not have an obligation to delete or return to you any Member Content you have posted to the Site, including, but not limited to, any reviews or feedback.

17. **CONTROLLING LAW AND JURISDICTION**

17.1. These Terms and your use of the Site will be interpreted in accordance with the laws of the Republic of South Africa.

18. **LIMITATION OF LIABILITY**

You acknowledge and agree that, to the maximum extent permitted by law, the entire risk arising out of your access to and use of the Site and any contact you have with other Users whether in person or online remains with you.

19. **DISCLAIMER**

19.1. If you choose to use the Site, you do so at your sole risk. The Site is provided "as is", without warranty of any kind, either express or implied. without limiting the foregoing, we explicitly disclaim any warranties of merchantability, fitness for a particular purpose, quiet enjoyment or non-infringement, and any warranties arising out of course of dealing or usage of the Site.

19.2. We make no warranty that the Site, including, but not limited to the Listings and/or Lots will meet your requirements or be available on an uninterrupted, secure, or error-free basis.

19.3. We make no warranty regarding the quality of any Listings and/or Lots, the accuracy, timeliness, truthfulness, completeness or reliability of any Collective Content obtained through the Site.

19.4. No advice or information, whether oral or written, obtained from us, or through the Site will create any warranty not expressly made herein.

19.5. You are solely responsible for all of your communications and interactions with other Users and with other persons with whom you communicate or interact as a result of your use of the Site and you understand that we do not make any attempt to verify the statements of Users. We make no representations or warranties as to the conduct of Users or their compatibility with any current or future Users. You agree to take reasonable precautions in all communications and interactions with other Users and with other persons with whom you communicate or interact, as a result of your use of the Site, particularly if you decide to meet offline or in person regardless of whether such meetings are organised by ourselves or otherwise.

20. **INDEMNIFICATION**

20.1. You agree to release, defend, indemnify, and hold us and our affiliates and subsidiaries, and their officers, directors, employees and agents, harmless from and against any claims, liabilities, damages, losses, and expenses, including, without limitation, reasonable legal and accounting fees, arising out of or in any way connected with:

20.1.1. your access to or use of the Site;

20.1.2. your Member Content;

20.1.3. your interaction with any Member;

20.1.4. your participation in a sales transaction;

- 20.1.5. any injuries, losses, or damages (compensatory, direct, incidental, consequential or otherwise) of any kind arising in connection with or sales transaction or access to and/or use of the Site.

21. NOTICES FROM SITE

If we need to contact you about your account or a sales transaction, you consent to be contacted by email. You agree that any such notices that we send you electronically will satisfy any legal communication requirements.

22. DISPUTE RESOLUTION

- 22.1. Should any dispute, disagreement or claim arise between the parties (called hereafter “the dispute”) concerning the Site, and the use or the interpretation thereof, the parties shall try to resolve the dispute by negotiation. This entails that the one party invites the other in writing to a meeting to attempt to resolve the dispute within 3 (three) days from date of conclusion of the BID Sale and / or BIN Sale.
- 22.2. If the dispute is not resolved by such negotiation, the parties shall submit the dispute to be finally resolved by an independent Dispute Resolution Panel comprising of three members appointed by us.
- 22.3. The Dispute Resolution Panel proceedings shall be conducted at Pietermaritzburg and in the English language.
- 22.4. The Dispute Resolution Panel shall enjoy the widest discretion to determine its own procedure and the manner in which it attends to the resolution of disputes.
- 22.5. The Dispute Resolution Panel shall endeavour to complete its work within 20 (twenty) days of a dispute being referred to it and it shall be competent to make cost orders, generally and particularly, to enforce discipline in its proceedings.
- 22.6. The parties irrevocably agree that the decision of the Dispute Resolution Panel:
- 22.6.1. will be binding on all of them;
- 22.6.2. will forthwith be carried into effect; and
- 22.6.3. may be made an order of any court of competent jurisdiction.
- 22.7. The provisions of this clause will be binding on the parties notwithstanding any termination or cancellation of the agreement.
- 22.8. This clause shall not preclude any party from applying for or obtaining interim relief of an urgent basis from a court of competent jurisdiction pending a decision of the arbitrators.