

TERMS AND CONDITIONS FOR BURGER KING® SOUTH AFRICA'S APP

The following provisions are drawn to the attention of the User to the extent that the Consumer Protection Act 68 of 2008 ("the CPA") applies to these Terms and Conditions: • clause 4 (including the fact, nature and effect of the limitation of liability contemplated therein); • clause 5 (including the fact, nature and effect of the indemnity contemplated therein); • clause 8 including the fact, nature and effect of the limitation of liability contemplated therein).

1. INTRODUCTION !

1.1 Burger King® South Africa (Pty) Ltd (Registration Number: 2011/143896/07) ("BURGER KING® South Africa") is launching a mobile application ("the Burger King® App") as part of Burger King mobile solution.

1.2. These terms and conditions ("Terms and Conditions") must be read with Burger King® South Africa's website terms and conditions ("Website T&C's"), which are available at www.burgerking.co.za ("Website") and any BURGER KING® South Africa promotional material utilised for the BK App Campaign or the Burger King® App ("Promotional Material"), which are owned and operated by Burger King® South Africa. Please note that certain defined terms contained in the Website T&C's will be utilised in these Terms and Conditions.

1.3. The terms "user", "you" and "your" are used interchangeably in these Terms and Conditions and refers to any individual who uses the Burger King® App from time to time (or intends using the Burger King® App) and any individual who downloads the Burger King® App.

1.4. These Terms and Conditions govern the Campaign and the downloading and use of the Burger King® App. Burger King® permits the use of the Burger King® App subject to these Terms and Conditions, and by using the Burger King® App you shall be deemed to have accepted all the terms and conditions unconditionally.

1.5 Please read these Terms and Conditions carefully and make sure you understand them before you download or use the Burger King® App. Please do not download or use the Burger King® App if you do not agree to these Terms and Conditions.

1.6 Nothing in these Terms and Conditions is intended or must be understood to unlawfully restrict, limit or avoid any right or obligation, as the case may be, created for either you or Burger King® South Africa in terms of the CPA.

2. ELIGIBILITY

2.1. There are limitations on who may download and use the Burger King® App. You may not download the Burger King® App if you are a minor (i.e. under the age of 18 (eighteen) years of age) or if you are not legally permitted to enter into a binding agreement. A minor may not use the Burger King® App unless the minor's parents or guardians have read these Terms and Conditions, agree to them on the minor's behalf and download the Burger King® App on the minor's behalf.

2.2. By downloading the Burger King® App, you hereby confirm and represent to Burger King® South Africa that:

2.2.1. you have unfettered legal capacity to contract; and

2.2.2. you agree to these Terms and Conditions and agree to be bound by them; and

2.2.3. if you are downloading the Burger King® App on behalf of a minor as contemplated in clause 2.1, you are the parents or legal guardians of the minor, you consent to the minor using the Burger King® App on the terms and conditions contained herein, you are agreeing to these Terms and conditions on behalf of yourself and the minor and you understand and agree that the limitation of liability and indemnity contained in these Terms and Conditions are duly binding on yourself and on the minor.

3. PARTICIPATION

3.1. The Burger King® App can be downloaded for free from the Apple Store or Google Play on a mobile phone with an iOS 9 or Android 4.2 operating system and higher.

4. LIABILITY

4.1 You hereby agree that your use of the Burger King® App is at your own risk. To the maximum extent permitted in law, neither BURGER KING® South Africa, nor its Related Parties, nor any persons related or inter-related (as contemplated in section 2 of the Companies Act 71 of 2008 (as amended)) to BURGER KING® South Africa or its Related Parties, nor any of their respective directors, prescribed officers, managers, employees, agents, franchisees, or other persons in respect of whose actions BURGER KING® South Africa may be held to be vicariously liable or anyone associated with any of them (collectively, "BURGER KING® South Africa Parties"), shall

incur any liability to any person for any injury, claim, loss or damage of any nature whatsoever, whether direct, indirect, consequential or otherwise, whatsoever or howsoever arising from your use or misuse of, or reliance upon the Burger King® App, or as a result of, or arising from any defects in the Burger King® App or your access to or inability to access the Burger King® App or otherwise. To the extent necessary in law the provisions of this clause 4 shall constitute a stipulatio alteri (i.e. a contract in favour of a third party) in favour of the BURGER KING® South Africa Parties, the benefit whereof may be accepted by any or all of them at any time, from time to time.

5. INDEMNITY

5.1 You indemnify the BURGER KING® South Africa Parties from any liability for any injury, claim, loss or damage of any nature whatsoever, whether direct, indirect, consequential or otherwise arising from your use of the Burger King® App and / or any linked external sites.

6. GOODS / SERVICES / CAMPAIGN

6.1 The BURGER KING® App offers, inter alia, the following goods and services:

- 6.1.1 Mobile payment solutions (by linking a credit or debit card);
- 6.1.2 Redemption of Vouchers, Coupons and / or Special Offers;
- 6.1.3 Purchasing of Gift Cards;
- 6.1.4 Customer discounts in the form of Loyalty Crowns;
- 6.1.5 Store locator.

7. PAYMENT

7.1 We are committed to providing secure online payment facilities. **All transactions are encrypted using appropriate encryption technology.** BURGER KING® South Africa will not have access to and will not store users payment information.

7.2 Payment can be made for goods via -

7.2.1 debit card;

7.2.2 credit card: where payment is made by credit card, we may require additional information in order to authorise and/or verify the validity of payment. In such cases we are entitled to withhold delivery until such time as the additional information is received by us and authorisation is obtained by us for the amounts. If we do not receive authorisation your order for the goods will be cancelled. You warrant that you are fully authorised to use the credit card supplied for purposes of paying the goods. You also warrant that your credit card has sufficient available funds to cover all

the costs incurred as a result of the services used on the BURGER KING® App and / or BURGER KING® Website;

7.2.4 Cash; (by selecting this option, you undertake to ensure that you have the exact cash on hand at the time of purchase / receipt of goods).

7.2.5 BURGER KING® Loyalty Crowns;

7.2 You may contact us via our **Help Page** to obtain a full record of your payment. We will also send you email communications about your order and payment.

7.3 Once you have selected your payment method (save for the cash payment method), you will be directed to a link to a secure site for payment of the applicable purchase price for the goods.

7.4 The full price of the goods (incl VAT) will be the price displayed on the Burger King® App and / or Website;

7.5 **Errors**

7.5.1 We shall take all reasonable efforts to accurately reflect the description, availability, purchase price and delivery charges of Goods on the BURGER KING® App. However, should there be any errors of whatsoever nature on the BURGER KING® App (which are not due to our gross negligence), we shall not be liable for any loss, claim or expense relating to a transaction based on any error, save – in the case of any incorrect purchase price – to the extent of refunding you for any amount already paid.

7.5.2 BURGER KING® South Africa shall not be bound by any incorrect information regarding our goods displayed on any external sites.

7.5.3 BURGER KING® South Africa reserves the right to vary, amend and / or modify any information pertaining to its offerings of goods, services and / or campaigns at any time and such amendment, variation and/or modification shall be effective immediately upon posting of the amendment, variation and/or modified content on the BURGER KING® Website or BURGER KING® App. Accordingly, the continued use by a user of the Burger King® App shall be deemed to be the user's acceptance of any such modified Terms and Conditions.

8. **PRIVACY AND INFORMATION**

8.1 These Terms and Conditions must be read in conjunction with any applicable provisions of BURGER KING® South Africa's Website T&C's relating to privacy, data collection, data protection, use and disclosure information and any applicable law.

8.2 We respect your privacy and will take reasonable measures to protect it, as more fully detailed below.

8.3 Insofar as it is possible for the user to enter personal or commercial data (including but not limited to names, gender, date of birth, email addresses, physical addresses and other contact details) into the Burger King ® App, this information is divulged by the user to BURGER KING® South Africa on an explicitly voluntary basis.

8.4 BURGER KING® South Africa collects, collates, process, exports and use the following types of information about you when you use this BURGER KING® App:

8.4.1 information provided by you. We may collect personal information (that is information about you that is personally identifiable like your name, address, gender, e-mail address, physical address, phone number(s) and other unique information such as product and service preferences and contact preferences that are not otherwise publicly available) to the extent that you provide us with same; and

8.4.2 information that is collected automatically. BURGER KING® South Africa receives and stores information which is transmitted automatically from the BURGER KING® App. This information includes information from cookies, your Internet Protocol ("IP") address, browser type, web beacons (which are electronic files that allow a web site to count users who have visited that page or to access certain cookies), embedded web links, and other commonly used information-gathering tools.

8.5 BURGER KING® South Africa may link information stored in cookies such as your age, gender and country with your personally identifiable information and we may use such information to gather statistics about the number of people who access the BURGER KING® App and to customize, amongst other things, the content and layout thereof.

8.6 Our advertising partners may set and access cookies or use other technologies such as web beacons in order to personalise advertising content. Use by these advertising partners of their own cookies and any other tracking technologies are subject to their privacy policies.

8.7 Use and Disclosure of information

8.7.1 BURGER KING® South Africa may use your information to, amongst other things:

8.7.1.1 keep you updated on new, promotional offers and promotional competitions;

8.7.1.2 assist you with making enquiries to BURGER KING® South Africa in relation to franchise, supplier, employment, property and marketing opportunities with BURGER KING® South Africa;

8.7.1.3 communicate with you about ourselves and/or various products and/or services;

8.7.1.4 provide services to you;

8.7.1.5 update you on new products, services and benefits;

8.7.1.6 select content to be communicated to you;

8.7.1.7 allow you to participate in promotional offers, promotional competitions and surveys;

8.7.1.8 contact you for market research regarding products or services.

8.7.2 In addition, BURGER KING® South Africa may use information about your product and/or service interests and promotional competition entries to help us improve the BURGER KING® App design.

8.7.3 BURGER KING® South Africa may use your email address and/or other contact details provided to contact you from time to time and may also use it for security reasons to confirm that you are who you say you are.

8.7.4 BURGER KING® South Africa may use the information collected automatically, such as your IP address and information stored via cookies, to gather statistics about the number of people who visit the BURGER KING® App and to customise the content, layout and services. We may share this information with third parties to help us improve and better serve our users.

8.7.5 Advertisements may be delivered to you by our advertising partners. BURGER KING® South Africa may however transfer information about your use of the BURGER KING® App, such as your IP address and information stored via cookies, to our advertising partners and other third parties. This information may be used to provide advertising, promotions and other products and services that may be of particular interest to you.

8.7.6 BURGER KING® South Africa's advertising and promotions partners have no access to your name or personal contact information stored by us unless you choose to share it with them. We will not provide your name or personal contact information to an advertising partner when you interact with or view a targeted advertisement.

8.7.7 BURGER KING® South Africa may provide your personally identifiable information and the data generated by cookies and the aggregate information to the vendors, service providers and service agencies that we may engage to assist us in providing our products and services to you. Such vendors and service agencies will be obligated to use your personally identifiable information solely to provide the products and/or services to us.

8.7.8 BURGER KING® South Africa will disclose your personally identifiable information if we reasonably believe we are required to do so by law, regulation or other government authority or to protect the rights and property of BURGER KING® South Africa, the Related Parties or the public. BURGER KING® South Africa may also co-operate with law enforcement in any official investigation and we may disclose your personally identifiable information to the relevant agency or authority in doing so.

8.7.9 BURGER KING® South Africa reserves the right to transfer your personal information in the event of a transfer of ownership, such as acquisition by, or merger with, another entity. If any acquiring entity should plan to materially change this the terms hereof, we will notify you beforehand.

8.7.10 By posting any information to this BURGER KING® App (including, but not limited to any text, photographs, graphics, videos and/or sound recordings) you grant to BURGER KING® South Africa any all rights necessary to enable us to make this information available on the BURGER KING® App and / or BURGER KING® Website, including the right to edit such content in our sole discretion.

8.7.11 Circumstances may arise where, whether for strategic or other business reasons, BURGER KING® South Africa decides to sell, buy, merge or otherwise reorganize its business or its shareholding. Such a transaction may involve the disclosure of personal information to prospective or actual purchasers, or the receipt of it from sellers.

8.7.12 This BURGER KING® App may contain links or references to other websites ("the external sites") which are outside of our control, including those of advertisers. These Terms and Conditions

do not apply to those external sites and BURGER KING® South Africa is not responsible for the practices and/or privacy policies of those external sites or the “cookies” that those sites may use, nor does BURGER KING® South Africa endorse same.

8.7.13 Notwithstanding the fact that the BURGER KING® App may refer to or provide links to external sites, your use of such external sites is entirely at your own risk and we are not responsible for any loss, expense, claim or damage, whether direct, indirect or consequential, arising from your use of such external sites or your reliance on any information contained therein.

9. INTELLECTUAL PROPERTY

9.1. Save for the limited license granted in terms of clause 9.2 hereunder, BURGER KING® South Africa retains all right, title and interest in and to the Burger King® App, which includes all content, services and functionality associated with the Burger King® App. The contents of the Burger King® App, including any material, information, data, software, icons, text, graphics, layouts, images, sound clips, advertisements, video clips, trade names, logos, trade-marks, designs and service marks which are displayed on or incorporated in the Burger King® App (“App Content”) are protected by law, including but not limited to copyright and trade mark law. The Website Content is the property of the Burger King® South Africa, its advertisers and/or sponsors and/or is licensed to the Burger King® South Africa.

9.2. Subject to your compliance with these Terms and Conditions, BURGER KING® South Africa hereby grants you a non-exclusive, non-transferable, non-sublicensable, revocable limited license to download, install and use the Burger King® App on a mobile device solely for your own personal, non-commercial purposes.

9.3. You hereby acknowledge that your right to download and use the Burger King® App is derived solely from BURGER KING® South Africa and is conditional upon your proper conduct, safe use of the Burger King® App and compliance with these Terms and Conditions at all times. BURGER KING® South Africa reserves the right to suspend or deny, in its sole discretion, your access to all or any portion of the Burger King® App.

9.4. You are not entitled to:

9.4.1. copy, reproduce, modify, alter, create derivative works of, sell, reverse engineer, decompile, or disassemble the Burger King® App, App Content or any part thereof; or

9.4.2. sub-license, assign, transfer, or in any manner give or grant or transfer, directly or indirectly, any rights granted in terms of these Terms and Conditions to any third party.

9.5. The limited license granted to you in terms of this clause 7 will be revoked (with or without notice) and ineffective if you:

9.5.1. are a minor and your parents or guardians have not read these Terms and Conditions, agreed to them on your behalf and downloaded the Burger King® App on your behalf in accordance with the provisions of clause 2;

9.5.2. engage in any act that BURGER KING® South Africa deems to be in conflict with the spirit or intent of these Terms and Conditions, the Website T&C's or the Promotional Material including, but not limited to, circumventing or manipulating these Terms and Conditions, the Website T&C's or the Promotional Material; or

9.5.3. fail to comply with any of the provisions of these Terms and Conditions.

9.6 Where any of the BURGER KING® App Content has been licensed to BURGER KING® South Africa or belongs to any third party, your rights of use will also be subject to any terms and conditions which that licensor or third party imposes from time to time and you agree to comply with such third-party terms and conditions.

10. NO WARRANTIES

The Burger King® App is provided to you "as is" without warranty of any kind. BURGER KING® South Africa hereby disclaims all warranties, either express or implied, to the maximum extent permitted by law.

11. GENERAL

11.1. These Terms and Conditions may be amended, varied and/or modified by BURGER KING® South Africa at any time and such amendment, variation and/or modification shall be effective immediately upon posting of the amended, varied and/or modified Terms and Conditions on the Website. Accordingly, the continued use by a user of the Burger King® App shall be deemed to be the user's acceptance of any such modified Terms and Conditions.

11.2. These Terms and Conditions shall comply with, and will be subject to, any peremptory

provisions of the CPA and the regulations promulgated thereunder, which are deemed to be incorporated herein ("Peremptory Provisions"). In the event of any conflict between these Terms and Conditions and the Peremptory Provisions, the latter shall prevail. Furthermore, no term or condition of these Terms and Conditions is intended to breach any Peremptory Provisions. Any breach of any such Peremptory Provision shall be governed by the provisions of clause 9.4 *mutatis mutandis* (i.e. subject to changing those things which need to be changed).

11.3. These Terms and Conditions, together with any terms and conditions appearing in the Website T&C's or in any Promotional Material, contains the entire agreement between the parties in relation to the subject matter hereof. Save as contemplated in these Terms and Conditions (including clause 11.1 above) no alteration, cancellation, variation of, or addition hereto will be of any force or effect.

11.4. Each sentence, paragraph, term, clause and provision of these Terms and Conditions and any portion thereof shall be considered severable and if, for any reason, any such sentence, paragraph, term, clause or provision is held to be invalid, contrary to, or in conflict with any applicable present or future law or regulation (including, without limitation, the CPA and any Regulations thereto) or in terms of a final, binding judgment issued by any court, it shall to that extent be deemed not to form part hereof and shall not impair the operation of, or have any effect upon such other sentence, paragraph, term, clause or provision hereof as may otherwise remain valid or intelligible, which shall continue to be given full force and effect and bind the parties hereto. If any provision of these Terms and Conditions is found by any Court to be unfair as contemplated in Regulation 44 to the CPA, then that provision will apply to the maximum extent permitted under the CPA and will further be governed by the provisions of this clause 11.4 *mutatis mutandis*.

11.5 Your access and /or use of the BURGER KING® App and the operation of these Terms and Conditions shall be governed by and construed in accordance with the laws of the Republic of South Africa.

11.6 The BURGER KING® App shall operate indefinitely. BURGER KING® South Africa may, in its sole discretion, at any time and for any reason and without prior written notice, suspend or terminate the operation of the BURGER KING® App or the user's right to use the BURGER KING® App or any of its contents.

11.6.1 You may not cede, assign or otherwise transfer your rights and obligations in terms of these Terms and Conditions to any third party.

11.6.2 Any failure on the part of you or BURGER KING® South Africa to enforce any right in terms hereof shall not constitute a waiver of that right.

11.6.3 If any term or condition contained herein is declared invalid, the remaining terms and conditions will remain in full force and effect.

11.6.4 No indulgence, extension of time, relaxation or latitude which any party (the "grantor") may show grant or allow to the other (the "grantee") shall constitute a waiver by the grantor of any of the grantor's rights and the grantor shall not thereby be prejudiced or stopped from exercising any of its rights against the grantee which may have arisen in the past or which might arise in the future.

12 SUPPLIER'S INFORMATION PROVIDED IN TERMS OF SECTION 43 OF THE ELECTRONIC COMMUNICATIONS AND TRANSACTIONS ACT 25 OF 2002 (ECT Act):

12.1 For the purposes of the ECT Act, BURGER KING® South Africa's information is as follows, which should be read in conjunction with its other terms and conditions contained on the BURGER KING® South Africa Website

12.1.1 **Full name and legal status:** Burger King South Africa (RF) Proprietary Limited, a private company duly incorporated under the laws of the Republic of South Africa;

12.1.2) **Physical address for receipt of legal service:** 33 on Heerengracht, Foreshore, Cape Town, 8001

12.1.3 **Telephone number:** + 27 (0)21 443 9223

12.1.4 **Web site address and e-mail address:** <http://www.burgerking.co.za> / info@whopper.co.za

12.1.5 **any code of conduct to which that supplier subscribes and how that code of conduct may be accessed electronically by the consumer:**

12.1.6 Registration number, place of registration and the names of office bearers:

12.1.6.1 **Registration number:** 2011/143896/07

12.1.6.2 **Registered Office:** 10th Floor, 33 on Heerengracht, Foreshore, Cape Town, 8001

12.1.6.3 Office bearers:

- Dr H Adams (Chairperson)
- MR D C Shear (Non-Resident Director)
- Mr J Klopper (Director)
- Ms Amber Hensburg c/o Statucor (Pty) Ltd (Company Secretary)

Refer to the Apple Media Services Terms and Conditions which can be found at <https://www.apple.com/legal/internet-services/itunes/za/terms.html> and Google Play Terms of Service which can be found at https://play.google.com/intl/en-GB_za/about/play-terms.html ("Apple and Google Play's Terms and Conditions")

Any reference to Apple and Google Play's Terms and Conditions are deemed, to the extent necessary in law, to be incorporated herein.