



WEBSITE, SOFTWARE, SERVICES AND FORUM TERMS AND CONDITIONS OF USE

IN TERMS OF SECTION 11 OF THE ELECTRONIC COMMUNICATIONS AND TRANSACTIONS (ECT) ACT 25 OF 2002 AND THE COMMON LAW OF CONTRACT, THESE TERMS AND CONDITIONS ARE VALID, BINDING AND ENFORCEABLE AGAINST ALL PERSONS THAT ACCESS THE MXit WEBSITE, DOWNLOAD AND INSTALL THE SOFTWARE OR USE THE SERVICE THROUGH THE MXit WEBSITE OR ANY PART THEREOF. IF YOU DO NOT AGREE TO BE BOUND BY THESE TERMS AND CONDITIONS YOU MUST LEAVE THE WEBSITE(S) IMMEDIATELY AS FURTHER USE WILL AUTOMATICALLY BIND YOU TO THESE TERMS AND CONDITIONS.

MXit Terms of Use

Welcome to MXit, a groundbreaking way to interact with other people using social networking and mobile instant messaging. Kindly read these terms of use if you want to use MXit, its services or if you want to download or install the MXit application. These terms of use apply to your use of MXit and of our services.

1. Definitions

1.1 In these terms of use, unless the context indicates a contrary intention, the following words shall have the meanings given to them:

1.1.1 “affiliated company” means in relation to MXit, a company which is a subsidiary or holding company of it, or a company which is a subsidiary of such holding company (holding company and subsidiary having the meanings ascribed to them in terms of the Companies Act 61 of 1973) and also means MXit International Limited and MXit Lifestyle Development Company (Pty) Ltd;

1.1.2 “chat” means the instant messaging service provided by MXit that can be used through the MXit application;

- 1.1.3 “contacts” means the people you have invited or whose invitation you have accepted and who are subsequently listed on the MXit application as your contacts;
- 1.1.4 “content” means the digital content like images, sound clips, ringtones, news or other information made available by MXit for you to purchase or to download for free;
- 1.1.5 “intellectual property rights” means all copyright, trade mark rights, patent and design rights, know-how and confidential information including methods, manuals, specifications, technical information and data relating to the services, the MXit application and the content;
- 1.1.6 “MXit” means MXit Lifestyle (Proprietary) Limited (Registration No. 2004/004890/07), a company incorporated under the laws of the Republic of South Africa;
- 1.1.7 “MXit application” means the software distributed by MXit for installation on mobile telephones or personal computers for the use by you to communicate with MXit users or with users of other instant messaging platforms, to use the services or to buy content;
- 1.1.8 “MXit sites” refers to MXit’s Internet website with URL www.mxit.com and to MXit’s WAP site with URL www.mxit.com/wap;
- 1.1.9 “services” means the instant messaging, chat, content, storage facility, discussion forums and any other service MXit may from time to time offer to users;
- 1.1.10 “terms of use” means these terms and conditions regulating your use of MXit and the services;
- 1.1.11 “territory” means the Republic of South Africa;
- 1.1.12 “upload” means the electronic transfer of information or data by you to the MXit site or to your user account;
- 1.1.13 “user account” refers to the account you create with MXit for your use of the services;
- 1.1.14 “VAT” means value added tax.

- 1.2 Unless specifically otherwise provided, all amounts mentioned by MXit are exclusive of VAT.

2. Agreement

- 2.1 Your use of the services and of the MXit application is subject to the terms and conditions outlined in these terms of use.
- 2.2 These terms of use bind you from the moment you register as a user of MXit, log on to your user account for the first time, when you launch the MXit application the first time or alternatively when you start using the services, whichever occurs first, and will remain in force until terminated by you or MXit as described in these terms of use. If you do not agree to the terms of use you will not be able to use the services or the Mxit application.
- 2.3 When you decide to use additional services, certain supplementary terms and conditions may apply. You agree to all such supplementary terms when using the additional services. If there is a conflict between the supplementary terms and these terms of use then the provisions of the supplementary terms shall prevail.
- 2.4 MXit reserves the right to amend these terms of use at any time, for any reason, and without notice. The amended terms shall enter into force on the date that they are published on www.mxit.com/rulz or when you accept the revised terms of use when installing a new version of the MXit application or from the first time you log on to MXit subsequent to such amendments, whichever occurs first.
- 2.5 If your use of the MXit services is dependent on using a cellular phone, personal computer or bandwidth of another person, you hereby represent that you have received that person's permission.
- 2.6 You must be at least 14 years old to enter into this agreement with MXit. If you are 17 (seventeen) years and younger but older than 14 (fourteen) you will inform your parents or guardians that you have registered for, and are using the services of MXit. Organisations, companies, businesses and other legal entities may not create a user account, use the services or install the MXit application.
- 2.7 If you have any queries or complaints about the MXit application or the services you can direct your queries or complaints to MXit's customer care department by sending a message to support@mxit.com.

- 2.8 MXit reserves the right to publish further guidelines, rules and policies on the MXit sites for the use of the services and you agree to adhere to such additional guidelines and rules. Such further guidelines, rules and policies are incorporated by reference into these terms of use and if there is any conflict between such further guidelines, rules and policies and these terms of use, the terms of use will have precedence. It is your duty to check the MXit sites frequently to see if there have been any changes to the terms of use.
- 2.9 If you find it difficult to read these terms of use on your cellular telephone, please visit MXit's Internet website at www.mxit.com/rulz to read these terms of use before accepting them. We will also send you a copy of the terms of use if you send a request by e-mail to support@mxit.com.
- 2.10 Your use of the MXit application and the services is for personal, non-commercial and lawful use only, and you agree not to use the MXit application or services to operate any commercial activities or to promote any products or other services.

3. Licensing of the MXit Application

- 3.1 MXit grants you a free non-exclusive, non-transferable, revocable, personal licence to download and install the MXit application on your cellular telephone, personal computer or other mobile device in the territory for the sole purpose of using the services provided by MXit and acquiring the content as described in the definition clause.
- 3.2 You may not do anything in respect of the MXit application unless these terms of use expressly permit you to do so. Without limiting the general nature of this prohibition, you may not distribute, sell, grant sub-licences or grant any rights to another person, nor render any services in respect of the MXit application, and you may not modify, reverse engineer, decompile, hack or create a derivative work of the MXit application.
- 3.3 MXit is under no obligation to release new versions of the MXit application.
- 3.4 For MXit to provide the MXit application free of charge, MXit secures revenue from other sources such as advertising and promotional activities. You agree to receive third party marketing communications and advertisements, such as splash screens, on your user account and you agree that you cannot optout of receiving third party marketing communication and advertisements.

4. Registration and Login

- 4.1 When you register with MXit to become a user your cellular telephone number will be used as your username. You warrant that the number you give to us is true and correct, and is linked to the SIM used in conjunction with the cellular telephone you use when logging in on your user account.
- 4.2 You may only log on to the MXit server using your own username and password. Your password is a secret code selected by yourself and it is your duty to keep it secret from other people.
- 4.3 When a person is logged on to your user account you agree that MXit can deem that it is you who has logged on and you accept responsibility for all actions taken from your user account.
- 4.4 You may not log on to the user account of someone else. You may not register more than one user account.
- 4.5 You may not give your username and password to someone else to log on to your user account or to access the services using your user account. You may also not authorise a third person to log onto your user account on your behalf.
- 4.6 You may not log on to your user account by using any other software or device other than the MXit application.
- 4.7 Since MXit cannot control the device you use to login on your user account, you agree that you are responsible for the security of that device. This includes, without derogating the general nature of the previous sentence, that you will protect your personal computer, cellular telephone and SIM card with adequate passwords to make sure no one other than yourself can use that device, and that you will keep the passwords secret from other people.
- 4.8 You agree to notify MXit immediately in writing to support@mxit.com when you become aware of any unauthorised use of your password or your user account, or other breach of security.

5. MXit Services

- 5.1 MXit does not warrant that the services will be available at all times.

- 5.2 It is your responsibility to acquire the hardware and Internet connectivity necessary to access the services and you are responsible for paying all fees that are due in respect of the hardware and the Internet connectivity.
- 5.3 The capabilities of your cellular telephone may limit the availability of some services to you or may mean that certain content can not be played or displayed on your cellular telephone.

6. Rules for chatting

- 6.1 When you register with MXit for the first time you will select a nickname. Only this nickname will be visible to your contacts.
- 6.2 You can only chat with people who are set up as your contacts or with people who are fellow members of chatrooms to which you have subscribed. By subscribing to a chatroom or adding contacts you give permission to the members of the chatroom and to the contacts to send you messages.
- 6.3 MXit does not warrant that the messages will reach you or your contacts. If you wish to keep a copy of your conversation it is your own responsibility to save the thread while the session is active.
- 6.4 You must always follow the chatting guidelines.

7. Chatrooms and forums

- 7.1 You have to register before you can join a forum or a chatroom. By registering you agree to the rules of that forum or chatroom and you agree to receive messages from all other members of the forum or the chatroom.
- 7.2 You agree not to post any material or messages to the chatrooms or forums that contravene the content policy. You also agree that any posting you make is entirely at your own risk.
- 7.3 MXit has the right, but not the obligation, to monitor postings to chatrooms or forums and also has the right, but not the obligation, to exercise editorial control over any material available on the chatrooms or forums. If you find that any content is unacceptable to you or it contravenes the content policy then it is your duty to report such unacceptable content to the MXit customer care line at support@mxit.com.

- 7.4 MXit, without derogation to the general provision in clause 7.3 above, has the right, but not the obligation, to appoint a moderator to manage any chatroom, and such person may retract permission given to you to join that chatroom and may edit or remove any content that was posted by you that may contravene the chatroom's or forum's rules.
- 7.5 MXit reserves the right to remove, edit or amend at its own discretion any content posted by you to a chatroom or forum.

8. Moola

- 8.1 Moola is MXit's token currency and 1 (one) Moola equals 1 (one) South African cent and can be used only to purchase services from MXit.
- 8.2 Certain services are free of charge and can be used without having any Moola in your user account. In addition to the free services MXit also provides services that are charged for. MXit has the discretion to decide for what service a fee will be charged. Any such fees will be communicated to you in advance and will be payable in Moola.
- 8.3 Once you have purchased Moola you cannot reverse the transaction, exchange the Moola or redeem them for cash. When your user account is inactive for a period of 6 (six) months or when MXit terminates your user account in terms of clause 12.5 or in terms of any other provision of these terms of use, you will forfeit all Moola linked to your user account.
- 8.4 Should you wish to use any of the paid for services, you can buy Moola through different channels, such as paying by credit card or by sending a premium rated SMS, and you agree that your bank or service provider may deduct payment for the Moola purchases from your account that you have with them. You give permission to MXit to deduct Moola amounts from your user account in respect of purchases you made.
- 8.5 MXit cannot guarantee that your bank, or any other service provider, will not charge you extra fees for purchasing Moola. It is your duty to make sure you use the most cost-efficient method to purchase Moola. See the MXit sites for guidelines.
- 8.6 When you purchase Moola MXit may sometimes, depending on the payment method you use, decide to credit your user account with bonus Moola. The decision to award bonus Moola will be at MXit's sole discretion and the awarding of bonus Moola will not derogate from the provisions of clause 8.1.
- 8.7 You can see the Moola balance on your user account.

- 8.8 You are responsible for ensuring that the channel or device you use to buy Moola is secure.

9. Third party content

- 9.1 MXit may sell content or services provided by third parties on the MXit application. In such cases MXit will indicate that the content or services are provided by third parties and you must familiarise yourself with the terms on which the third parties offer to make the content or services available to you. Such third party terms are not incorporated by reference into these terms of use. MXit will act as an agent for the third party and will not be liable to you for the third party content or service.

10. Content policy

- 10.1 You agree to be bound by MXit's content policy, a copy of which is available on the MXit sites and if you request us to do so we will send you a copy.
- 10.2 You agree that MXit has no control over any content or communication you receive from any of your contacts. You may therefore be exposed to unwanted content and it is your duty to report any undesirable content to MXit.

11. Privacy

- 11.1 MXit collects the following personal information about you:
- 11.1.1 You cellular telephone number;
 - 11.1.2 The area where you reside;
 - 11.1.3 Your Internet protocol address ("IP address"), and;
 - 11.1.4 Your history of using the MXit application and the services.
- 11.2 MXit may use your personal information to render the services to you, to activate the MXit application, to improve the services and the MXit application, and to compile non-personal statistics about the use of the services.
- 11.3 Although MXit will take reasonable care to ensure that your privacy is protected MXit cannot guarantee your privacy.
- 11.4 You agree that unless communication over the Internet has been encrypted that it is not secure. MXit does not encrypt your communication and you agree that MXit is not responsible for any unauthorised access to your communications. Due to the nature of

the Internet your communications may be transmitted through countries other than the territory.

- 11.5 You agree not to post personal information, such as your telephone number, street address, last name, e-mail address or other contact details on the MXit site, through the services or in a chatroom so that it is publicly accessible to other users. MXit is not responsible for any harm you may suffer resulting from your failure to comply with this undertaking.
- 11.6 MXit shall only disclose your personal information to other people when it is necessary to render the services, if you have given permission or if they are entitled by law to access your personal information. You agree that MXit may share your personal information with third parties for marketing and promotional activities related to MXit and the services.
- 11.7 MXit does not want to receive or transmit any confidential, secret or proprietary information and any information you send to MXit or to your contacts, or that you post to any forum or chatroom will not be deemed to be confidential, secret or proprietary information.
- 11.8 You are hereby informed, and you agree thereto, that MXit may in so far as it is allowed by law, intercept any communication sent and received by yourself using the MXit application or the services.
- 11.9 You understand that MXit may not notify you in the event that MXit is required by law to monitor your communications communication and that, if required by law, it has to disclose such communications together with your personal information to the relevant law enforcing authority.

12. MXit's rights

- 12.1 MXit may, but is not obliged to, review any communications, postings, content, intellectual property, messages, photos, videos, hyperlinks or other material that is uploaded or displayed on the services, and may remove or delete any such material that in MXit's sole discretion contravenes this clause or the content policy, or is offensive, illegal or inappropriate.

- 12.2 MXit may suspend the services for any reason, including for repairs or upgrades to any of MXit's systems and MXit may suspend your account pending any investigation into a possible breach by you of these terms of use.
- 12.3 MXit may decide to change the features and technical aspects of the MXit application or the services. Such changes may cause interruptions to the services and may require you to make changes to the settings on your cellular telephone or to your personal computer.
- 12.4 If you have provided MXit with the incorrect cellular telephone number as referred to in clause 4.1, MXit may at MXit's sole discretion either suspend your user account until you provide the correct cellular telephone number and then change your user name to the correct cellular telephone number, or terminate your user account.
- 12.5 If you have not logged in to your user account for a period of 6 (six) months, MXit may terminate your user account and allow another user to use your username and nickname.

13. Intellectual Property Rights

- 13.1 The intellectual property rights are either owned by MXit or licensed to MXit and include any applications or renewals of such rights, and are protected by intellectual property laws. The compilation of such intellectual property is also the exclusive property of MXit, and is likewise protected by South African and international copyright laws. The name "MXit" and the MXit logo are registered trademarks of MXit and its affiliated companies and may not be used in any manner without MXit's permission. All other intellectual property rights not owned by MXit that appear on the MXit sites or MXit services are the property of their respective owners.
- 13.2 You may use the intellectual property rights only in conjunction with the services and the MXit application.
- 13.3 You may not, without MXit's prior written permission, use any of MXit's other intellectual property or that of third parties for any purposes other than using the MXit services. The intellectual property rights remain the exclusive property of MXit and nothing in these terms of use intends to transfer any intellectual property rights to you other than giving you the licence as described in clause 3 above. Without limiting the general meaning of the first part of this clause, nothing in these terms of use should be construed as granting any licence or right to use any trademark displayed on the MXit

sites or the MXit application without MXit's prior written permission and/or that of third parties, as the case may be.

- 13.4 You shall not display or distribute any other person's intellectual property on MXit without first having received that person's permission to do so.

14. User obligations

- 14.1 You will only use the MXit application and the services for legitimate and lawful purposes and you agree to abide by all laws when using the services.
- 14.2 The MXit application and the services rely on you having access to adequate bandwidth. It is your duty to make sure you have access to bandwidth and to pay your Internet service provider or telephone company for the bandwidth you use in connection with the services.
- 14.3 You must maintain your own backups and the services cannot be seen as an alternative form of back-up. You need to guard against losses of any kind and MXit is not responsible for any loss of any content you purchased from MXit or for any data you uploaded to MXit or to your user account.
- 14.4 You agree to maintain and update your user account information to keep it true, accurate and complete.
- 14.5 You may have access to the services when you travel outside the territory but the availability is not guaranteed by MXit. It is your obligation to pay the roaming charges that will be charged by the foreign network.
- 14.6 You agree not to engage in any activities that may cause damages or losses to MXit.

15. Cooling Off Rights

- 15.1 The cooling off rights as described in section 44 of the Electronic Communications and Transactions Act 25 of 2002 do not apply, in terms of section 42(2) of the same Act, to your purchasing Moola or of any services.

16. Unauthorised Conduct

- 16.1 You may not monitor, intercept or modify any communication that is not addressed to you or to your user account.

- 16.2 You may not use any harmful or malicious code, such as viruses, trojan horses, worms or spiders, to interfere with or access any data, communications or software associated with the services, the MXit application or any services/content otherwise owned by MXit.
- 16.3 You may not send any unsolicited communication to MXit or to any MXit user, whether such unsolicited communication is sent to the MXit user's user account or to any other address of such MXit user.
- 16.4 You may not use the MXit services in such a manner as to threaten, harass, embarrass or invade the privacy of any person.
- 16.5 You may not resell the MXit services or any content you bought from MXit to a third party.
- 16.6 You may not impersonate any other MXit user or any other person, and you may not use another person's username or password to access another user's account.
- 16.7 You shall not abuse, harass, threaten, intimidate or harm any other user or any member of MXit's staff.

17. Warranties

- 17.1 You warrant that:
 - 17.1.1 Information given by you to MXit is true and correct.
 - 17.1.2 You are a resident of South Africa.
 - 17.1.3 You will adhere to these terms of use.
 - 17.1.4 You are 14 (fourteen) years or older.

18. Indemnity

- 18.1 You agree to indemnify, defend and hold MXit, its parent companies, subsidiaries, affiliates, officers, directors, agents, licensors and any other partners and employees harmless from any and all claims, losses, expenses, damages, actions, demands, liabilities or costs, including but not limited to legal fees resulting from:
 - 18.1.1 Any violation of these terms of use by you;
 - 18.1.2 Any material posted by you to a chatroom or forum.

19. Disclaimers

19.1 MXit makes various disclaimers throughout these terms of use. In addition to those MXit also disclaims the following:

19.1.1 MXit does not warrant that you will always be able to communicate with your contacts or have access to the services and content. This may be for different reasons, amongst others, because you or your contact's cellular telephone does not have reception or if a telecommunications provider on whom you, your contact or MXit rely to get the services, is unavailable.

19.1.2 You cannot rely on the MXit services to dispatch any emergency communications.

19.1.3 MXit does not warrant the quality, performance, fitness for purpose, non-infringement or merchantability of the MXit application.

20. Liability

20.1 You agree that MXit will not be liable for any loss or special, incidental, indirect or consequential damages of any kind resulting from your use of the services, the MXit application, any content acquired from MXit or from any third party through the services, from your participation in any chatroom or forum, or in connection with any information or data uploaded to MXit. MXit will further not be liable to any third party who has obtained content from you.

20.2 When a hyperlink on any of the MXit sites or the MXit application refers to information that can be found elsewhere, then it is your obligation to study such information. MXit does not accept liability for the information or data contained on any third party website, even if MXit has included a hyperlink to such website.

20.3 In the event of a court ruling that the provisions of clause 20.1 are invalid or non-binding, you agree that MXit's liability will be limited to an amount of R5000.00 (five thousand Rand) for all claims during any calendar year.

21. Termination

21.1 When these terms of use terminate, all the supplementary terms and guidelines will terminate at the same time. The licences granted in clause 3 will also terminate at the same time and you will immediately stop using the MXit application, remove it from the

cellular telephone, personal computer and/or other devices on which it has been installed, and destroy all other copies of the MXit application in your possession.

- 21.2 The following clauses will survive the termination of these terms of use: clause 13 (intellectual property), clause 18 (indemnity), clause 19 (disclaimer) and clause 20 (liability).

22. Breach

- 22.1 If you violate any of your obligations as described in these terms of use MXit may, without limiting any other right, warranty or indemnification that may be granted to it under these terms of use, cancel these terms of use immediately and without prior notice to you, suspend your access to the services, remove any content uploaded by you and/or ban you for such period as MXit may deem fit from using the services.

23. General

- 23.1 These terms of use shall be deemed to have been concluded in Stellenbosch, South Africa.
- 23.2 You may not cede, assign, delegate or in any other way alienate or dispose of any or all of your rights and obligations under and in terms of these terms of use without the prior written approval of MXit. MXit on the other hand shall be entitled to cede, assign or otherwise transfer this agreement or its rights in terms of this agreement without your prior consent and without giving notice to you.
- 23.3 You agree that for the purposes of the giving of any notice, the serving of any process and for any other purposes arising from these terms of use that MXit may send such notices to your cellular telephone number as indicated on your user account.
- 23.4 MXit chooses Riesling House, Brandwacht Office Park, Trumali Road, Stellenbosch, 7600, South Africa as its *domicilium citandi et executandi* ("domicilium") for the purposes of the giving of any notice, the payment of any sum, the serving of any process and for any other purposes arising from these terms of use.
- 23.5 These terms of use constitute the whole agreement between you and MXit relating to the matters dealt with herein and, save to the extent otherwise provided herein, no undertaking, representation, term or condition relating to the subject matter of these terms of use not incorporated in these terms of use shall be binding on any of the parties.

- 23.6 Failure or delay on the part of any party hereto in exercising any right, power or privilege hereunder will constitute or be deemed to be a waiver thereof, nor will any single or partial exercise of any right, power or privilege preclude any other or further exercise thereof or the exercise of any other right, power or privilege.
- 23.7 Each clause of these terms of use is separate and severable from the other clauses and if any clause, or part thereof, of these terms of use is retrospectively found to be defective or unenforceable then that provision only shall be deemed to be modified to the extent and in the manner necessary to render it consistent with the enactment rendering it unlawful, or if such modification is impossible to be *pro non scripto*. The remaining clauses shall continue to be of full force and effect.
- 23.8 The law of the Republic of South Africa will apply to these terms of use and to all subsequent amendments and variations thereof, including the interpretation, validity, performance, consequences of breach, remedies, assessment of damages, extinguishing of obligations and limitations of actions. The applicable law will apply to all disputes arising out of these terms of use or in relation to these terms of use.
- 23.9 MXit shall not be liable for any costs you incur to obtain professional advice on these terms of use.
