

Terms And Conditions

Terms & Conditions

OCEAN GEAR

1. Introduction

1.1 This website can be accessed at www.ocean-gear.co.za ("the Website") and is made available by, Ocean Gear

1.2 These Website Terms and Conditions ("Terms") governs the advertising and sale of an extensive range of services, goods and products including fishing tackle, apparel, footwear, boat accessories ("Products") as may be offered by Ocean Gear on the Website from time to time.

1.3 These Terms are binding and enforceable against every person that accesses or uses the Website or registers as a user ("you" or "your"). By using the Website and/or by clicking on the "Register" button on the Website, as may be applicable, you acknowledge that you have read and agree to be bound by these Terms.

1.4 If there is any provision in these Terms that you do not understand, it is your responsibility to ask Ocean Gear to explain it to you before you accept the Terms or continue using the Website.

1.5 Ocean Gear permits the use of this Website subject to these Terms. By using the Website in any way, you shall be deemed to have accepted all the Terms unconditionally. You must not use this Website if you do not agree to the Terms.

2. Important Notice

2.1 These Terms apply to users who are consumers for purposes of the Consumer Protection Act, 68 of 2008 ("the CPA") and contain provisions that appear in similar text and style to this clause and which –

2.1.1 may limit the risk or liability of Ocean Gear or a third party; and/or

2.1.2 may create risk or liability for you; and/or

2.1.3 may compel you to indemnify Ocean Gear or a third party; and/or

2.1.4 serves as an acknowledgement, by you, of a fact.

2.2 Your attention is drawn to these Terms because they are important and should be carefully noted.

2.3 Nothing in these Terms 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 Ocean Gear in terms of the CPA.

3. Acceptance of these Terms

3.1 By accessing and/or using the Website, you agree to be bound by the Terms.

3.2 Ocean Gear may at any time modify any of the Terms and such modification will supersede and replace any previous terms.

3.3 The amended terms will be made available on the Website and each time that You access the Website and/or use the Products or services offered via the Website, you agree to be bound by the Terms, as may be modified from time to time.

4. Content of the Website

4.1 Whilst every effort is made to update the information provided on the Website on a regular basis, Ocean Gear makes no representations or warranties, whether express, implied in law or residual, as to the accuracy, completeness or reliability of any information, data and/or content on the Website from time to time.

4.2 Ocean Gear reserves the right at any time to change or discontinue without notice, any aspect or feature of the Website and any information, data and/or content on the Website.

5. Registration and Use of Website

5.1 Before purchasing any products via the Website, you may be obliged to enter your user name or and personal password ("password") or other unique identifying information. Jointly we refer to the username and password and other unique identifying information as your "Access Codes".

5.2 You undertake and warrant to ensure that your Access Codes are not disclosed to any third party and to immediately report any actual or potential unauthorised access to or use of your Access

Codes.

5.3 On receipt of such notice from you, Ocean Gear reserves the right to reject any communication received from your profile, suspend the processing of any communications and orders not yet executed by Ocean Gear and immediately deactivate your Access Codes. You shall thereafter be obliged to refrain from ordering any products until such time as new Access Codes have been authorised by Ocean Gear

5.4 Ocean Gear may from time to time require you to change your Access Codes, as the case may be, and you undertake to comply with such instruction immediately.

5.5 You agree that Ocean Gear will accept and process your order for Products once the correct Access Codes have been entered, irrespective of whether the use of the Access Codes is unauthorised or fraudulent and that you will be liable for payment of such order, save where the order is cancelled by you in terms of these Terms.

5.6 By using the Website you warrant that you are 18 (eighteen) years of age or older and of full legal capacity. If you are under the age of 18 (eighteen) or if you are not legally permitted to enter into a binding agreement, then you may use the Website only with the involvement and supervision of your parent or legal guardian. If your parent or legal guardian supervises you and gives his/her consent, then such person agrees to be bound to these Terms and to be liable and responsible for you and all your obligations under these Terms.

5.7 You agree that you will not in any way use any device, software or other instrument to interfere or attempt to interfere with the proper working of the Website. In addition, you agree that you will not in any way use any robot, spider, other automatic device, or manual process to monitor, copy, distribute or modify the Website or the information contained herein, without the prior written consent from an authorised Ocean Gear representative (such consent is deemed given for standard search engine technology employed by Internet search websites to direct Internet users to this Website).

5.8 You may not in any way display, publish, copy, print, post or otherwise use the Website and/or the information contained therein without the express prior written consent of an authorised Ocean Gear representative.

6. Verification

6.1 You agree that all instructions, consents, orders and other communications which purport to originate from you or a person who had authority to act on your behalf to operate automatically (unless it is proved that such information system did not properly execute such programming) (collectively "the originator") and which are sent to Ocean Gear electronically and which may (as a result of interception, equipment malfunction, the distortion of communication links or any other reason whatsoever) be different from the instructions actually sent or given, or may not have been given by you at all, shall be deemed to have been given by the originator in the form actually received by Ocean Gear and you will be bound by such instruction with no liability of whatever nature attaching to Ocean Gear in regard thereto.

6.2 You waive any rights that you may have or obtain against Ocean Gear arising directly or indirectly from any loss or damage of whatsoever nature which you may suffer as a result of the fact that Ocean Gear acts on your instructions/orders or instructions/orders purported to emanate from you and you indemnify Ocean Gear against all and any claims, liabilities, losses, costs, fines, damages and expenses incurred (whether directly or indirectly) by you, arising as a result of the fact that Ocean Gear has acted on your instructions/orders or instructions/orders which purported to emanate from you.

7. Orders, confirmation & delivery

7.1 The advertising of Products via the Website merely constitutes an invitation by Ocean Gear for you to make an offer to purchase Products and we remain entitled to reject any order without giving reasons therefore and without any liability to you.

7.2 As erroneous information and/or prices may be displayed on this Website from time to time, you agree Ocean Gear cannot be held liable for any inaccurate information and/or prices published on the Website, save where such liability arises from the gross negligence or wilful misconduct of Ocean Gear, its employees, agents or authorised representatives. We will not under any circumstances whatsoever be obligated to sell a Product at such erroneous price displayed on the Website. You are encouraged to contact us to report any possible errors by way of email to info@ocean-gear.co.za or by contacting us on 076 6854835

7.3 Once you have selected the Product you wish to purchase and submitted your order to Ocean Gear, you will be given the opportunity to review the entire transaction and correct any mistakes, before electing whether to withdraw from the transaction or proceed with the transaction. By clicking on the "proceed" or "purchase" or similar "final submit" button you are deemed to have submitted an offer to purchase the Product/s selected by you ("order") and the order can be withdrawn by you.

7.4 Ocean Gear reserves the right to cancel the order for any reason on notice to you and without any liability to you. Receipt of a confirmation of the order (which only constitutes acceptance by Ocean Gear to process the order) will be sent to you once we receive your order. Although the Website is set up to confirm receipt of orders, technical or other problems may delay or prevent such confirmations. DO NOT resend your instruction if you do not receive a confirmation from us as this may lead to a duplicate transaction for which you will be held liable.

7.5 Please note: A transaction will only be deemed to have been concluded once the Product/service in question has been delivered in accordance with the selected delivery option or agreed process. Ocean Gear will indicate the acceptance of your order by delivering the Products to you or allowing you to collect them, and only at that point will an agreement of sale between you and Ocean Gear come into effect (the "Sale"). This is regardless of any communication from Ocean Gear stating that your order or payment has been confirmed. Ocean Gear will indicate any rejection of your order by cancelling it and, as soon as possible thereafter, refunding you for any amount already paid.

7.6 We reserve the right to withhold approval and / or cancel orders at our sole discretion.

7.7 Placing Products in a wish list or shopping basket without completing the purchase cycle does not constitute an order for such Products, and as such, Products may be removed from the shopping basket if stock is no longer available or the price thereof might change without notice to you. You cannot hold Ocean Gear liable if such Products are not available or are not available at the particular price when you complete or attempt to complete the purchase cycle at a later stage.

7.8 Delivery times are estimated times only and we are not liable for any late deliveries.

7.9 ****We reserve the right to verify the identity of any purchaser or the payment method used. This may entail you being required to, amongst other, send us a copy of your identity document, proof of residence, copy of front and back of your credit card. Failure to do so may result in us cancelling the order without reason. If Ocean Gear approves your application you may be required to sign additional terms & conditions, which will form the basis of Ocean Gear agreement with you. A copy of these terms can be obtained by calling our helpdesk on 076 6854835. If you do not agree to these additional terms & conditions then your application will be cancelled and you will not be entitled to use or access the product or service you have subscribed to.

7.10 Risk in the products shall pass to you or your authorized representative on delivery.

8. Performance and availability of Products

8.1 Ocean Gear endeavours to execute all orders within the time period notified but by accepting these Terms, you acknowledge and agree that delivery of orders can from time to time fall outside of these time periods due to a number of reasons out of our control including but not limited to logistic delays. By accepting these Terms and transacting on the Website, you acknowledge that no liability is incurred by Ocean Gear in these instances.

8.2 You acknowledge that stock of all Products on offer is limited and accept that the display of Products is not necessarily a guarantee that a Product is available.

8.3 When Products are no longer available Ocean Gear will notify you and you will be entitled to a refund of the amount paid by you for such Products. Whilst Ocean Gear will take all reasonable efforts to monitor stock levels, we cannot guarantee the availability of stock and we will only be liable for delivery of the Products when the Products are available. Should the Products no longer be available, you shall be entitled to either be credited or refunded for any payments already made by you.

8.4 ****For information on guarantees applicable to Products purchased by you, please see our warranties / guarantee policy.

9. Payments

9.1 We accept payments via EFT.

9.2 **EFT / Instant EFT payments:**

If payment for the full amount does not reflect in our bank account within 14 days, your order will be cancelled.

Orders will only be delivered once receipt of the total value of your online order has been confirmed by our bank.

10. Disclosures required in terms of Section 43 of the Electronic Communications and Transactions Act 25 of 2002

10.1 Full name: Ocean Gear

10.2 Physical address : 47 Nelson Road Fish Hoek

10.3 Telephone number : 076 6854835

10.4 Website address : <http://www.ocean-gear.co.za>

10.5 E-mail address : info@ocean-gear.co.za

10.6 Members details: Gareth Decker

10.7 Physical address for receipt of service : 47 Nelson Road Fish Hoek

10.8 A full record of your transactions can be requested from info@ocean-gear.co.za

You may request a record of your transaction for up to 90 (ninety) days after which we will not be obligated to keep any records of your transactions.

11. Returns

11.1 Please refer to the refunds policy, which sets out our policy regarding returns or exchanges.

11.2 Nothing on our refunds policy or these Terms in any way limits your rights in terms of section 56 (read with section 55) of the CPA.

12. Cancellations

12.1 You are, in terms of section 44 of the Electronic Communications and Transactions Act 25 of 2002 ("ECT Act") entitled to cancel, without reason and without penalty, your order for the Products within 7 (seven) days of receipt of the Products. In such an event -

12.1.1 you will receive a full refund of the purchase price within 30 (thirty) days of the date of your cancellation of the order;

12.1.2 you undertake not to utilise the Products;

12.1.3 your agreement of purchase will be deemed to have been cancelled, and

12.1.4 you will be liable, in terms of section 44(2) of the ECT Act, for the direct costs of returning the products, such as courier and/or shipping charges.

12.2 If for any reason you would like to cancel an order this may be done by contacting us on 076 6854835. You will only be able to cancel orders up to 17:00 on the day prior to the date of delivery.

12.3 If you cancel your order later than 7 (seven) days of receipt of the Products, we reserve the right to debit your payment card for the delivery fees in respect of any late cancellations. If you cancel your payment for any reason or if your payment card should cease to be valid for whatever reason, you will nevertheless be bound to pay the full purchase price, including all costs incurred by us relating to the recovery thereof. Without prejudice to any other rights or remedies in law, we reserve the right to cancel forthwith any sale and/or your registration in the event of your breach of any of these Terms.

13. Privacy and Security

All personal information obtained by Ocean Gear by virtue of your use of this Website is protected as set out in our privacy and security policy . Further, the security processes and procedures used by Ocean Gear to protect information transmitted via the Website are also set out in the privacy and security policy.

13.1 Copyright and Intellectual Property Rights

13.2 Copyright and all intellectual property rights in all materials, texts, images, drawings and data made available on Website (collectively "the materials") are owned by Ocean Gear alternatively, Ocean Gear is the lawful user thereof and are protected by both South African and international intellectual property laws. You will not acquire any right, title or interest in or to the Website or the material. Accordingly, any unauthorised copying, reproduction, retransmission, distribution, dissemination, sale, publication, broadcast or other circulation or exploitation of such material or any component thereof will constitute an infringement of such copyright and other intellectual property rights; save that you may use the materials or any component thereof for your own internal purposes and for the purposes of ordering products from Ocean Gear .Copyright and all intellectual property rights in all materials, texts, images, drawings and data made available on Website (collectively "the materials") are owned by Ocean Gear alternatively, Ocean Gear is the lawful user thereof and are protected by both South African and international intellectual property laws. You will not acquire any right, title or interest in or to the Website or the material. Accordingly, any unauthorised copying, reproduction, retransmission, distribution, dissemination, sale, publication, broadcast or other circulation or exploitation of such material or any component thereof will constitute an infringement of such copyright and other intellectual property rights; save that you may use the materials or any component thereof for your own internal purposes and for the purposes of ordering products from Ocean Gear.

13.3 Where any of the materials has been licensed to Ocean Gear 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.

13.4 The trademarks, names, logos and service marks (collectively "trademarks") displayed on Website are registered and unregistered trademarks of Ocean Gear. Nothing contained on Website should be construed as granting any licence or right to use any trademark without the prior written permission of Ocean Gear.

14. External links

14.1 External links may be provided for your convenience, but they are beyond the control of Ocean Gear and no representation is made as to their content. Use or reliance on any external links provided is 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 links or your

reliance on any information contained thereon.

14.2 When visiting external links you must refer to the external terms and conditions of use of such external links. You may not link to this Website, in any manner, or frame any content of this Website in any other manner or otherwise use the content without the express prior written permission of Ocean Gear.

15. Unlawful use

15.1 You shall not use the Website to send or post any message or material that is unlawful, harassing, defamatory, abusive, indecent, threatening, harmful, vulgar, obscene, sexually orientated, racially offensive, profane, pornographic or violates any applicable law and you hereby indemnify Ocean Gear against any loss, liability, damage or expense of whatever nature (whether direct or indirect) which Ocean Gear or any third party may suffer which is caused by or attributable to, whether directly or indirectly, your use of the Website to send or post any message or material as aforesaid.

Warranties, Disclaimers and Limitation of Liability

15.2 Save as set out in the Terms, Ocean Gear makes no warranties, representations, statements or guarantees (whether express, or implied in law or residual) regarding the Website and the Products and the Website and Products made available via the Website are provided "as is".

15.3 Neither Ocean Gear or its members shall be responsible for and disclaims all liability for any loss, liability, damage (whether direct, indirect or consequential) and/or expense of any nature whatsoever which may be suffered by you or any third party, as a result of or which may be attributable, directly or indirectly, to your access and use of the Website and/or any information contained on or via the Website and/or your use of the Products. Without limiting the generality of the foregoing, neither Ocean Gear nor its members shall be liable for any failure and/or unavailability of the Website for any reason whatever and/or the failure/delay by any third party service provider to render any service which are necessary to ensure the availability of the Website.

15.4 You hereby indemnify Ocean Gear or its members against any loss, liability, damage (whether direct, indirect or consequential) or expense of any nature whatsoever which may be suffered by you or any third party as a result of or which may be attributable directly or indirectly to the aforesaid. Notwithstanding anything to the contrary contained herein, Ocean Gear shall not be liable for any direct, indirect, contingent or consequential loss (including but not limited to loss of business, loss of data and/or loss of profits) incurred or sustained by you or any third party howsoever arising in respect of your use of or reliance of any information offered on or via the Website and/or your use of the Products.

15.5 Without limiting the generality of the foregoing, Ocean Gear shall not be liable to you or any third party for any loss or damage of whatsoever nature in the event that you request that an order be stopped or cancelled.

15.6 By accessing the Website, you warrant and represent to Ocean Gear that you are legally entitled to do so to purchase any of the Products offered for sale via the Website. You further warrant that all the details you have given are true and complete and that you are legally capable of concluding this transaction. If you are younger than 18 years of age you warrant that you have the consent of your legal guardian to enter into this agreement with Ocean Gear or that you have obtained legal status in another manner.

15.7 Further to the provisions of our privacy and security policy, whilst we will do all things reasonably necessary to protect your rights of privacy, we cannot guarantee or accept any liability whatsoever for unauthorised or unlawful disclosures of your personal information, whilst in our possession, made by third parties who are not subject to our control, unless such disclosure is as a result of our gross negligence. If you disclose your personal information to a third party, such as an entity which operates a website linked to this Website or anyone other than Ocean Gear, Ocean Gear shall not be liable for any loss or damage, however arising, suffered by you as a result of the disclosure of such information to the third party. This is because we do not regulate or control how that third party uses your personal information. You should always ensure that you read the privacy policy of any third party.

15.8 We will use reasonable endeavours to maintain the availability of the Website, except during scheduled maintenance periods. We may in our sole discretion at any time suspend or terminate the operation of this Website without prior notice to you and without the need to give you reasons for such termination. You agree that Ocean Gear will not be liable to you in the event that it chooses to suspend or terminate the Website other than for processing any orders made by you prior to such time and to the extent possible.

15.9 In addition to the disclaimers contained elsewhere in these Terms, Ocean Gear also makes no warranty or representation, whether express or implied, that the information or files available on the Website are free of viruses, spyware, malware, trojans, destructive materials or any other data or code which is able to corrupt, destroy, compromise, disrupt, disable, harm, jeopardise or otherwise

impede in any manner the operation, stability, security functionality or content of your computer system, computer network, hardware or software in any way. You accept all risk associated with the existence of such viruses, destructive materials or any other data or code which is able to corrupt, compromise, jeopardise, disrupt, disable, harm or otherwise impede in any manner the operation or content of a computer system, computer network, any handset or mobile device, or your hardware or software, save where such risks arise due to the gross negligence or wilful misconduct of the Company, its employees, agents or authorised representatives. Ocean Gear thus disclaims all liability for any damage, loss or liability of any nature whatsoever arising out of or in connection with your access to or use of the Website.

16. Use of the Website

Ocean Gear does not make any warranty or representation that information and products advertised on the Website are appropriate for use in any jurisdiction. By accessing the Website, you warrant and represent to Ocean Gear that you are legally entitled to do so and to make use of information and purchase the Products made available via the Website.

17. Address for Service

17.1 The address for service for all purposes relating to these Terms including the giving of any notice, the payment of any sum, the serving of any process, is the address set out paragraph in 10.2 above and the telefax number set out in paragraph 10.3 above.

17.2 Ocean Gear shall be entitled from time to time, by giving notice to you to vary its physical address for service to any other physical address within the Republic of South Africa, and to vary its facsimile address for service to any other facsimile number.

18. General

18.1 Without detracting from the provisions of your account terms and conditions, the Terms constitute the sole record of the agreement between you and Ocean Gear in relation to your use of this Website. No indulgence or extension of time which either you or Ocean Gear may grant to the other will constitute a waiver of or, whether by estoppel or otherwise, limit any of the existing or future rights of the grantor in terms hereof, save in the event or to the extent that the grantor has signed a written document expressly waiving or limiting such rights.

18.2 Ocean Gear shall be entitled to cede, assign and delegate all or any of its rights and obligations in terms of these Terms.

18.3 All provisions of these Terms are, notwithstanding the manner in which they have been grouped together or linked grammatically, severable from each other. Any provision of these Terms which is or becomes unenforceable in any jurisdiction, whether due to invalidity, illegality, unlawfulness or for any reason whatever, shall, in such jurisdiction only and only to the extent that it is so unenforceable, be treated as pro non scripto and the remaining provisions of these Terms shall remain in full force and effect.

18.4 Should Ocean Gear be prevented from fulfilling any of its obligations to you as a result of any event of force majeure, then those obligations shall be deemed to have been suspended to the extent that and for as long as Ocean Gear is so prevented from fulfilling them and your corresponding obligations shall be suspended to the corresponding event. In the event that force majeure continues for more than fourteen days after it has first occurred then Ocean Gear shall be entitled (but not obliged) to terminate all of its rights and obligations in terms of or arising out of these terms by giving notice to you. An "event of force majeure" shall mean any event or circumstance whatsoever which is not within the reasonable control of including, without limitation, vis major, casus fortuitus, any act of God, strike, theft, riots, explosion, insurrection or other similar disorder, war (whether declared or not) or military operations, the downtime of any external telecommunications line, power failure, international restrictions, any requirement or any international authority, any requirement of any government or other competent local authority, any court order, export control or shortage or transport facilities.

18.5 For purposes of calculating any time periods GMT +2 shall be used.

18.6 These Terms and conditions shall apply to all transactions you conclude via this Website.

18.7 A certificate issued by an administrator of this Website shall constitute prima facie proof of any fact related to this Website, including but not limited to which version of the Terms govern a particular dispute and what content was published or functionality was available on the Website at a specific point in time.

18.8 When you visit the Website or send emails to us, you consent to receiving communications from us electronically.

18.9 The deeming provisions of the ECT Act are excluded to the extent that no message shall be deemed to have been received by us unless we acknowledge receipt thereof in writing. This does not detract from the fact that if you submit an order more than once you may have concluded a double transaction for which you will be liable and that a transaction will only be deemed to have been concluded between you and Ocean Gear on delivery/collection of the product or service.

19. Dispute Resolution

19.1 These Terms and our relationship and/or any dispute arising from or in connection with these Terms shall be governed by and construed in accordance with the laws of the Republic of South Africa without giving effect to any principles of conflict of law.

19.2 All disputes arising as a result of your use of the Website or on the interpretation of these Terms or on any matter which in terms of the Terms requires agreement by you and Ocean Gear, (other than where an interdict is sought, or urgent relief may be obtained from a court of competent jurisdiction), will be submitted to and decided by arbitration.

19.3 That arbitration will be held with only you and Ocean Gear and your/our representatives present at the offices of the Arbitration Foundation of Southern Africa, Cape Town, South Africa. The arbitration will be governed by the rules of the Arbitration Foundation of Southern Africa in terms of South African law and will be heard by an arbitrator or arbitrators appointed by the Arbitration Foundation of South Africa. The arbitration award will be final and binding on you and Ocean Gear. We agree to keep the evidence in the arbitration proceedings and any order made by any arbitrator confidential. The arbitrator will have the power to give default judgment if either of us fails to make submissions on the due date and fails to appear at the arbitration.