

# MTV UP SA ONLINE STORE - GENERAL TERMS AND CONDITIONS

## 1. Introduction

- 1.1 This website can be accessed at [www.mtvup.co.za](http://www.mtvup.co.za), related mobi-sites and software applications (the “**Website**”) and is owned and operated by eProfiler Diagnostics (Proprietary) Limited T/A eWellness Solutions (“**eProfiler**”, “**we**”, “**us**” and “**our**”).
- 1.2 These Website Terms and Conditions (“**Terms and Conditions**”) govern the ordering, sale and delivery of Goods, and the use of the Website.
- 1.3 These Terms and Conditions are binding and enforceable against every person that accesses or uses this Website (“**you**”, “**your**” or “**user**”), including without limitation each user who registers as contemplated below (“**registered user**”). **By using the Website and by clicking on the “Register Now” button on the Website, as may be applicable, you acknowledge that you have read and agree to be bound by these Terms and Conditions.**
- 1.4 The Website enables you to shop online for a range of goods including energy drinks under the name MTV UP (“**Goods**”).
- 1.5 These general terms and conditions shall apply to the purchase of products via the website [www.mtvup.co.za](http://www.mtvup.co.za)
- 1.6 The products on this website are sold by eProfiler Diagnostics on behalf / as commission agent of MTV UP and Viacom Inc. MTV UP and Viacom international are not parties of these general terms and conditions of sale, but hold all rights to this website’s domain name, the logos, registered trademarks relating to the products available on this website and holder of all copyrights relating to this website and its contents.

## 2. Important Notice

- 2.1 These Terms and Conditions apply to users who are consumers for purposes of the Consumer Protection Act, 68 of 2008, as amended (the “**CPA**”). **These Terms and Conditions contain provisions that appear in similar text and style to this clause and which -**
1. **may limit the risk or liability of MTV UP SA or a third party; and/or**
  2. **may create risk or liability for the user; and/or**
  3. **may compel the user to indemnify MTV UP SA or a third party; and/or**
  4. **serves as an acknowledgement, by the user, of a fact.**

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

2.3 If there is any provision in these Terms and Conditions that you do not understand, it is your responsibility to ask MTV UP SA to explain it to you before you accept the Terms and Conditions or continue using the Website.

2.4 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 MTV UP SA in terms of the CPA.

2.5 MTV UP SA permits the use of this Website subject to the Terms and Conditions. By using this Website in any way, you shall be deemed to have accepted all the Terms and Conditions unconditionally. You must not use this Website if you do not agree to the Terms and Conditions.

### **3 Returns**

3.1 Please refer to our Returns Policy for more information about returning products (and related refunds, or replacements). The Returns Policy is incorporated by reference (which means that it forms part of these Terms and Conditions).

### **4 Registration and use of the website**

4.1 Only registered users may order Goods on the Website.

4.2 To register as a user, you must provide a unique username and password and provide certain information and personal details to MTV UP SA. You will need to use your unique username and password to access the Website in order to purchase Goods.

4.3 You agree and warrant that your username and password shall:

4.3.1 be used for personal use only; and

4.3.2 not be disclosed by you to any third party.

4.4 For security purposes you agree to enter the correct username and password whenever ordering Goods, failing which you will be denied access.

**4.5 You agree that, once the correct username and password relating to your account have been entered, irrespective of whether the use of the username and password is unauthorised or fraudulent, you will be liable for payment of such order, save where the order is cancelled by you in accordance with these Terms and Conditions.**

4.6 You agree to notify MTV UP SA immediately upon becoming aware of or reasonably suspecting any unauthorised access to or use of your username and password and to take steps to mitigate any resultant loss or harm.

**4.7 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 Conditions and to be liable and responsible for you and all your obligations under these Terms and Conditions.**

4.8 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 MTV UP SA representative (such consent is deemed given for standard search engine technology employed by Internet search websites to direct Internet users to this Website).

4.9 You may not use the Website to distribute material, which is defamatory, offensive, contains or amounts to hate speech or is otherwise unlawful.

4.10 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 MTV UP SA representative.

## **5 Conclusion of sales and availability of stock**

5.1 Registered users may place orders for Goods, which MTV UP SA may accept or reject. Whether or not MTV UP SA accepts an order depends on the availability of Goods, correctness of the information relating to the Goods (including without limitation the price) and receipt of payment or payment authorisation by MTV UP SA for the Goods.

5.2 **NOTE: MTV UP SA will indicate the acceptance of your order by delivering the Goods to you, and only at that point will an agreement of sale between you and MTV UP SA come into effect (the “Sale”). This is regardless of any communication from MTV UP SA stating that your order or payment has been confirmed. MTV UP SA will indicate the rejection of your order (by MTV UP SA itself) by cancelling it and, as soon as possible thereafter, refunding you for any amount already paid.**

5.3 Prior to delivery or your collection of the Goods, you may cancel an order at any time provided you do so before receiving a dispatch or delivery notice. After delivery of the Goods, you may return the Goods only in accordance with the Returns Policy.

5.4 Placing Goods in the shopping basket without completing the purchase cycle does not constitute an order for such Goods, and as such, Goods 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 MTV UP SA liable if such Goods 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.

5.5 **You acknowledge that stock of all Goods on offer is limited and that pricing may change at any time without notice to you. In the case of Goods for sale by MTV UP SA, MTV UP SA will take all reasonable efforts to monitor stock levels and ensure that when stock is no longer available, that offers thereof are discontinued on the Website. However, we cannot guarantee the availability of stock. When Goods are no longer available after you have placed an order, MTV UP SA will notify you and you will be entitled to a refund of any amount already paid by you for such Goods.**

## 6 Payment

6.1 We are committed to providing secure online payment facilities. All transactions are encrypted using appropriate encryption technology.

6.2 Where Goods are for sale by MTV UP SA, payment can be made for Goods via -

6.2.1 debit card;

6.2.2 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 Website;**

6.2.3 direct bank deposit or electronic funds transfer: if you pay via direct bank deposit or electronic funds transfer, payment must be made within 5 (five) days of placing your order. MTV UP SA will not accept your order if payment has not been received;

6.2.4 Instant EFT;

6.2.5 cash on delivery (except where any of our exclusions apply by selecting this option, you undertake to ensure that you have the exact cash on hand at the time of delivery).

6.2.6 MasterPass;

6.2.7 Sbox; and

6.2.8 Mobicred.

6.3 The above payment options are explained in more detail in our Frequently Asked Questions (“**FAQ**”): Payment, which are incorporated by reference.

6.4 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.

6.5 Once you have selected your payment method (save for cash on delivery or direct bank deposit), you will be directed to a link to a secure site for payment of the applicable purchase price for the Goods.

## 7 Delivery of goods

7.1 MTV UP SA offers 1 (one) method of delivery of Goods to you. Delivery is effected via:

7.1.1 Courier.

7.2 For more information about delivery, please see our FAQs: Shipping and Delivery, which are incorporated into these Terms by reference. Our delivery charges are subject to change at any time, without prior notice to you, so please check the FAQs for the most up-to-date information. You will see the applicable delivery charges in your cart when you check out.

7.3 Where it accepts your order, MTV UP SA will deliver the Goods to you as soon as reasonably possible, but no later than 30 (thirty) days of receipt of your payment ("Delivery Period"). We will notify you if we are unable to deliver the Goods during the Delivery Period. You may then, within 7 (seven) days of receiving such notification elect whether or not to cancel your order for the Goods. If you elect to cancel your order, we will reimburse you for the purchase price.

7.4 MTV UP SA's obligation to deliver a product to you is fulfilled when we deliver the product to the physical address nominated by you for delivery of the order. **MTV UP SA is not responsible for any loss or unauthorised use of a product, after it has delivered the product to the physical address nominated by you.**

## 8 Errors

8.1 **We shall take all reasonable efforts to accurately reflect the description, availability, purchase price and delivery charges of Goods on the Website. However, should there be any errors of whatsoever nature on the Website (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, or otherwise as set out in the Returns Policy.**

8.2 MTV UP SA shall not be bound by any incorrect information regarding our Goods displayed on any third party websites.

## 9 Coupons

9.1 MTV UP SA may from time to time make promotional coupons or discounts (“Coupons”) available for use on the Website towards the purchase of MTV UP Goods. Coupons can only be redeemed while they are valid and their expiry dates cannot be extended. More specifically:

### 9.2 **Coupons**

9.2.1 There are two types of Coupons; a Coupon with a fixed amount of a discount, e.g. R100 off (“**Fixed Coupon**”), and a Coupon with a percentage discount, e.g. 10% off (“**Percentage Coupon**”).

9.2.2 Coupons are issued in MTV UP SA’s sole discretion and we are entitled at any time to correct, cancel or reject a Coupon for any reason (including without limitation where a Coupon has been distributed in an unauthorised manner). Users do not have a right to Coupons, and Coupons cannot be earned. Coupons are issued under specific terms and conditions regulating when and how they may be used.

9.2.3 As a general rule, and unless specified otherwise on the specific Coupon itself:

9.2.3.1 each Coupon can only be used once;

9.2.3.2 only one Coupon can be used per order;

9.2.3.3 only one Coupon can be used on the Website per person per promotion/campaign;

9.2.3.4 Percentage Coupons may only be redeemed on purchases with a total cart value of less than R5,000;

9.2.3.5 where a Percentage Coupon has been used and you wish to cancel any items in the order prior to making payment, the entire order must be cancelled. You will be issued with a new Percentage Coupon and will need to place the order again, without the item that you wished to cancel;

- 9.2.3.6 a Coupon must be used at check-out – it cannot be used later on existing orders; and
- 9.2.3.7 the value of the Coupon will be set off against the value of your shopping basket and the balance remaining, if any, will be payable by you.
- 9.2.4 Coupons cannot be used to buy Gift Vouchers or other Coupons, and cannot be exchanged or refunded for cash or credit. **MTV UP SA is not responsible for any harm due to the loss, unauthorised use or distribution of a Coupon.**
- 9.2.5 If for any reason a Coupon does not reflect on the final amount due from you at check-out, you can contact us [here](#) to confirm if the Coupon is still valid. If MTV UP SA confirms that the Coupon is still valid and you have already placed your order, you can choose whether to cancel the order and place it again with the Coupon, or you can use the Coupon on your next order within the limitations of the specific Coupon's terms and conditions.
- 9.2.6 You may be required to submit the original communication containing the Coupon code, and any other information reasonably requested by MTV UP SA, before you are able to use a Coupon.
- 9.2.7 Click [here](#) for instructions on how to use/redeem a promotional coupon.

## 10 Privacy policy

We subscribe to the principles as set out in the Protection of Personal Information Act 4 of 2013 (as amended), and the Electronic Communications and Transaction Act 25 of 2002 (as amended), and adhere to such principles when dealing with the privacy and confidentiality of our consumers' personal information.

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



10.2 Should you decide to register as a user on the Website, we may require you to provide us with personal information which includes but is not limited to -

10.2.1 your name and surname;

10.2.2 your email address;

10.2.3 your physical address;

10.2.4 your gender;

10.2.5 your mobile number; and

10.2.6 your date of birth.

10.3 Should your personal information change, please inform us and provide us with updates to your personal information as soon as reasonably possible to enable us to update your personal information.

10.4 You may choose to provide additional personal information to us, in which event you agree to provide accurate and current information, and not to impersonate or misrepresent any person or entity or falsely state or otherwise misrepresent your affiliation with anyone or anything.

10.5 Subject to clause 10.6 below, we will not, without your express consent:

10.5.1 use your personal information for any purpose other than as set out below:

10.5.1.1 in relation to the ordering, sale and delivery of Goods;

10.5.1.2 to contact you regarding current or new Goods or services or any other goods offered by us or any of our divisions, affiliates and/or partners (unless you have opted out from receiving marketing material from us);

10.5.1.3 to inform you of new features, special offers and promotional competitions offered by us or any of our divisions, affiliates and/or partners (unless you have opted out from receiving marketing material from us); and

10.5.1.4 to improve our product selection and your experience on our Website by, for example, monitoring your browsing habits, or tracking your sales on the Website; or

10.5.2 disclose your personal information to any third party other than as set out below:

10.5.2.1 to our employees and/or third party service providers who assist us to interact with you via our Website, email or any other method, for the ordering of Goods or when delivering Goods to you, and thus need to know your personal information in order to assist us to communicate with you properly and efficiently;

10.5.2.2 to our divisions, affiliates and/or partners (including their employees and/or third party service providers) in order for them to interact directly with you via email or any other method for purposes of sending you marketing material regarding any current or new goods or services, new features, special offers or promotional items offered by them (unless you have opted out from receiving marketing material from us);

10.5.2.3 to law enforcement, government officials, fraud detection agencies or other third parties when we believe in good faith that the disclosure of personal information is necessary to prevent physical harm or financial loss, to report or support the investigation into suspected illegal activity, or to investigate violations of these Terms and Conditions;

10.5.2.4 to our service providers (under contract with us) who help with parts of our business operations (fraud prevention, marketing, technology services etc). However, our contracts dictate that these service providers may only use your information in connection with the services they perform for us and not for their own benefit;

10.5.2.5 to our suppliers in order for them to liaise directly with you regarding any faulty Goods you have purchased which requires their involvement; and

10.6 We are entitled to use or disclose your personal information if such use or disclosure is required in order to comply with any applicable law, subpoena, order of court or legal process served on us, or to protect and defend our rights or property. In the event of a fraudulent online payment, MTV UP SA is entitled to disclose relevant personal information for criminal investigation purposes or in line with any

other legal obligation for disclosure of the personal information which may be required of it.

10.7 We will ensure that all of our employees, third party service providers, divisions, affiliates and partners (including their employees and third party service providers) having access to your personal information are bound by appropriate and legally binding confidentiality obligations in relation to your personal information.

10.8 **Ratings and Reviews:** When you provide a rating or review of a Product, you consent to us using that rating or review as we deem fit, including without limitation on the Website, in newsletters or other marketing material. The name that will appear next to that rating or review is your First Name, as you would have provided upon registration. If you do not agree to this, please do not put any ratings or reviews on the Website. We will not display your Last Name, nor any of your contact details, with a rating or review.

10.9 We will -

10.9.1 treat your personal information as strictly confidential, save where we are entitled to share it as set out in this policy;

10.9.2 take appropriate technical and organisational measures to ensure that your personal information is kept secure and is protected against unauthorised or unlawful processing, accidental loss, destruction or damage, alteration, disclosure or access;

10.9.3 provide you with access to your personal information to view and/or update personal details;

10.9.4 promptly notify you if we become aware of any unauthorised use, disclosure or processing of your personal information;

10.9.5 provide you with reasonable evidence of our compliance with our obligations under this policy on reasonable notice and request; and

10.9.6 upon your request, promptly return or destroy any and all of your personal information in our possession or control, save for that which we are legally obliged to retain.

10.10 We will not retain your personal information longer than the period for which it was originally needed, unless we are required by law to do

so, or you consent to us retaining such information for a longer period.

10.11 **MTV UP SA undertakes never to sell or make your personal information available to any third party other than as provided for in this policy.**

10.12 **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.**

10.13 **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 MTV UP SA, MTV UP SA SHALL NOT BE LIABLE FOR ANY LOSS OR DAMAGE, HOWSOEVER 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 and accustomise yourself with the privacy policy of any third party.**

10.14 This website makes use of “cookies” to automatically collect information and data through the standard operation of the Internet servers. “**Cookies**” are small text files a website can use (and which we may use) to recognise repeat users, facilitate the user’s on-going access to and use of a website and allow a website to track usage behaviour and compile aggregate data that will allow the website operator to improve the functionality of the website and its content, and to display more focused advertising to a user by way of third party tools. The type of information collected by cookies is not used to personally identify you. If you do not want information collected through the use of cookies, there is a simple procedure in most browsers that allows you to deny or accept the cookie feature. Please note that cookies may be necessary to provide you with certain features available on our Website, and thus if you disable the cookies on your browser you may not be able to use those features, and your access to our Website will therefore be limited. **If you do not disable “cookies”, you are deemed to consent to our use of**

**any personal information collected using those cookies, subject to the provisions of this clause 10.**

## **11 Changes to these Terms and Conditions**

11.1 MTV UP SA may, in its sole discretion, change any of these Terms and Conditions at any time. It is your responsibility to regularly check these Terms and Conditions and make sure that you are satisfied with the changes. Should you not be satisfied, you must not place any further orders on, or in any other way use, the Website.

11.2 Any such change will only apply to your use of this Website after the change is displayed on the Website. If you use the Website after such amended Terms and Conditions have been displayed on the Website, you will be deemed to have accepted such changes.

## **12 Electronic communications**

12.1 When you visit the Website or send emails to us, you consent to receiving communications from us or any of our divisions, affiliates or partners electronically in accordance with our privacy policy as set out in clause 10 above.

## **13 Ownership and copyright**

13.1 The contents of the Website, including any material, information, data, software, icons, text, graphics, lay-outs, images, sound clips, advertisements, video clips, trade names, logos, trade-marks, designs and service marks which are displayed on or incorporated in this Website ("**Website Content**") are protected by law, including but not limited to copyright and trade mark law. The Website Content is the property of MTV UP, its advertisers and/or sponsors and/or is licensed to MTV UP SA.

13.2 You will not acquire any right, title or interest in or to the Website or the Website Content.

13.3 Any use, distribution or reproduction of the Website Content is prohibited unless expressly authorised in terms of these Terms and Conditions or otherwise provided for in law. To obtain permissions for the commercial use of any Website Content contact us via our [Help page](#).

- 13.4 Where any of the Website Content has been licensed to MTV UP SA 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.

#### 14 **Disclaimer**

- 14.1 **The use of the Website is entirely at your own risk and you assume full responsibility for any risk or loss resulting from use of the Website or reliance on any information on the Website.**
- 14.2 **Whilst MTV UP SA takes reasonable measures to ensure that the content of the Website is accurate and complete, MTV UP SA makes no representations or warranties, whether express or implied, as to the quality, timeliness, operation, integrity, availability or functionality of the Website or as to the accuracy, completeness or reliability of any information on the Website. If MTV UP SA's representatives make any such representations or warranties, MTV UP SA shall not be bound thereby.**
- 14.3 **MTV UP SA disclaims liability for any damage, loss or expenses, whether direct, indirect or consequential in nature, arising out of or in connection with your access to or use of the Website and/or any content therein unless otherwise provided by law.**
- 14.4 **Although Goods sold from the Website may, under certain specifically defined circumstances, be under warranty, the Website itself and all information provided on the Website is provided "as is" without warranty of any kind, either express or implied, including, but not limited to, the implied warranties of merchantability, fitness for a particular purpose, completeness, or non-infringement, as may be allowed in law.**
- 14.5 **Any views or statements made or expressed on the Website are not necessarily the views of MTV UP SA, its directors, employees and/or agents.**
- 14.6 **In addition to the disclaimers contained elsewhere in these Terms and Conditions, MTV UP SA 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 MTV UP SA, its employees, agents or authorised representatives. MTV UP SA 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.

## **15 Linking to third party websites**

- 15.1 This Website may contain links or references to other websites (“**Third Party Websites**”), which are outside of our control, including those of advertisers. These Terms and Conditions do not apply to those Third Party Websites and MTV UP SA is not responsible for the practices and/or privacy policies of those Third Party Websites or the “cookies” that those sites may use.
- 15.2 **Notwithstanding the fact that the Website may refer to or provide links to Third Party Websites, your use of such Third Party Websites 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 Third Party Websites or your reliance on any information contained thereon.**

## **16 Limitation of liability**

- 16.1 **MTV UP SA cannot be held liable for any inaccurate information published on the Website and/or any incorrect prices displayed**

on the Website, save where such liability arises from the gross negligence or wilful misconduct of MTV UP SA, its employees, agents or authorised representatives. You are encouraged to contact us to report any possible malfunctions or errors by way of our [Help page](#).

- 16.2 **MTV UP SA SHALL NOT BE LIABLE FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL LOSS OR DAMAGES WHICH MIGHT ARISE FROM YOUR USE OF, OR RELIANCE UPON, THE WEBSITE OR THE CONTENT CONTAINED IN THE WEBSITE; OR YOUR INABILITY TO USE THE WEBSITE, AND/OR UNLAWFUL ACTIVITY ON THE WEBSITE AND/OR ANY LINKED THIRD PARTY WEBSITE.**
- 16.3 **YOU HEREBY INDEMNIFY MTV UP SA AGAINST ANY LOSS, CLAIM OR DAMAGE WHICH MAY BE SUFFERED BY YOURSELF OR ANY THIRD PARTY ARISING IN ANY WAY FROM YOUR USE OF THIS WEBSITE AND/OR ANY LINKED THIRD PARTY WEBSITE.**

## **17 Availability and termination**

- 17.1 We will use reasonable endeavours to maintain the availability of the Website, except during scheduled maintenance periods, and are entitled to discontinue providing the Website or any part thereof with or without notice to you.
- 17.2 **MTV UP SA may in its sole discretion terminate, suspend and modify this Website, with or without notice to you. You agree that MTV UP SA will not be liable to you in the event that it chooses to suspend, modify or terminate this Website other than for processing any orders made by you prior to such time, to the extent possible.**
- 17.3 **If you fail to comply with your obligations under these Terms and Conditions, including any incident involving payment of the price of an order for any Goods, this may (in our sole discretion with or without notice to you) lead to a suspension and/or termination of your access to the Website without any prejudice to any claims for damages or otherwise that we may have against you.**



- 17.4 **MTV UP SA is entitled, for purposes of preventing suspected fraud and/or where it suspects that you are abusing the Website and/or have created multiple user profiles to take advantage of a promotion or Coupon intended by MTV UP SA to be used once-off by you, to blacklist you on its database (including suspending or terminating your access to the Website), refuse to accept or process payment on any order, and/or to cancel any order concluded between you and MTV UP SA, in whole or in part, on notice to you. MTV UP SA shall only be liable to refund monies already paid by you (see MTV UP SA's Returns Policy in this regard), and accepts no other liability, which may arise as a result of such blacklisting and/or refusal to process any order.**
- 17.5 **At any time, you can choose to stop using the Website, with or without notice to MTV UP SA.**

#### **18 Governing law and jurisdiction**

- 18.1 These Terms and Conditions and our relationship and/or any dispute arising from or in connection with these Terms and Conditions shall be governed and interpreted in accordance with the laws of the Republic of South Africa. Your continued use of the Website will constitute your consent and submission to the jurisdiction of the South African courts regarding all proceedings, transactions, applications or the like instituted by either party against the other, arising from any of these Terms and Conditions.
- 18.2 In the event of any dispute arising between you and MTV UP SA, you hereby consent to the non-exclusive jurisdiction of the High Court of the Republic of South Africa (Gauteng Division, Johannesburg) notwithstanding that the quantum in the action or proceedings may otherwise fall below the monetary jurisdiction of that court.
- 18.3 Nothing in this clause 18 or the Terms and Conditions limits your right to approach any court, tribunal or forum of competent jurisdiction in terms of the CPA.

#### **19 Notices**

- 19.1 MTV UP SA hereby selects 33 Ballyclare Drive, Ballywoods Office Park, Cedarwood House, Bryanston, 2191, Johannesburg, as its address for the service of all formal notices and legal processes in connection with these Terms and Conditions (“legal address”). MTV UP SA may change this address from time to time by updating these Terms and Conditions.
- 19.2 You hereby select the delivery address specified with your order as your legal address, but you may change it to any other physical address by giving MTV UP SA not less than 7 days’ notice in writing.
- 19.3 Notices must be sent either by hand, prepaid registered post, telefax or email and must be in English. All notices sent -
- 19.3.1 by hand will be deemed to have been received on the date of delivery;
- 19.3.2 by prepaid registered post, will be deemed to have been received 10 days after the date of posting;
- 19.3.3 by telefax before 16h30 on a business day will be deemed to have been received, on the date of successful transmission of the telefax. All telefaxes sent after 16h30 or on a day which is not a business day will be deemed to have been received on the following business day; and
- 19.3.4 by email will be deemed to have been on the date indicated in the “Read Receipt” notification. **ALL EMAIL COMMUNICATIONS BETWEEN YOU (THE CONSUMER) AND US (MTV UP SA) MUST MAKE USE OF THE “READ RECEIPT” FUNCTION** to serve as proof that an email has been received.

## 20 Complaints

- 20.1 We are a participant under the Consumer Goods and Services Industry Code and are bound by it. An electronic copy of this Code is available at <http://www.cgso.org.za/downloads/>. If you have a complaint about the goods or services provided by us or require information regarding our internal complaints-handling process, please get in touch with us via our [Help page](#) on the Website or you can contact us directly at [hello@mtvup.co.za](mailto:hello@mtvup.co.za)

20.2 If we don't resolve your complaint within 15 (fifteen) business days of you having notified us of it, you are entitled to approach the Consumer Goods and Services Ombud ("CGSO"), to assist in resolving the dispute. The CGSO's contact details are: Website: <http://www.cgso.org.za/> Sharecall: 0860 000 272 Email: [complaints@cgso.org.za](mailto:complaints@cgso.org.za)



## 21 Information

21.1 For the purposes of the ECT Act (Electronic Communications Act 25 of 2002, as amended), MTV UP SA's information is as follows, which should be read in conjunction with its product descriptions and other terms and conditions contained on the Website:

21.1.1 **Full name:** eProfiler Diagnostics (Pty) Ltd t/a eWellness Solutions, a private company registered in South Africa with registration number 2011/009925/07

21.1.2 **Main business:** FMCG and Online retailer

21.1.3 **Physical address for receipt of legal service (also postal and street address):** 33 Ballyclare Drive, Ballywoods Office Park, Cedarwood House, Bryanston, 2191, Johannesburg (marked for attention: CEO and Legal)

21.1.4 **Office bearers:** Kagisho Machacha

21.1.5 **Phone number:** +27 61 448 8410

21.1.6 **Email address:** [hello@mtvup.co.za](mailto:hello@mtvup.co.za)

21.1.7 **PAIA:** The manual published in terms of section 51 of the Promotion of Access to Information Act 2000 may be downloaded from our homepage.

## 22 General

- 22.1 MTV UP SA may, in its sole discretion, at any time and for any reason and without prior written notice, suspend or terminate the operation of the Website or the user's right to use the Website or any of its contents subject to us processing any orders then already made by you.
- 22.1.1 You may not cede, assign or otherwise transfer your rights and obligations in terms of these Terms and Conditions to any third party.
- 22.1.2 Any failure on the part of you or MTV UP SA to enforce any right in terms hereof shall not constitute a waiver of that right.
- 22.1.3 If any term or condition contained herein is declared invalid, the remaining terms and conditions will remain in full force and effect.
- 22.1.4 No variation, addition, deletion, or agreed cancellation of the Terms and Conditions will be of any force or effect unless in writing and accepted by or on behalf of the parties hereto.
- 22.1.5 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.
- 22.1.6 These Terms and Conditions contain the whole agreement between you and MTV UP SA and no other warranty or undertaking is valid, unless contained in this document between the parties.

## MTV UP SA ONLINE STORE - RETURNS POLICY

If you are not completely satisfied with your purchase, you can return the product to us and we will either repair / replace it, or credit your account, subject to the below terms. This Policy applies to products bought from MTV UP SA itself.

Certain parts of this Policy do not apply to Unboxed deals, or reconditioned products, and this is indicated in the relevant sections below. Unboxed Deals are returned products that are offered for sale at discounted prices, because their original packaging is damaged, unsealed or missing, or the products show signs of handling and/or re-packaging.

This Policy forms part of the MTV UP SA Terms and Conditions, and so words defined in the Terms and Conditions have the same meaning in this Policy, unless the context indicates otherwise. Nothing in this Policy is intended to limit your statutory rights in any way.

### **Preparing your products for a return**

To ensure your request is processed, as quickly as possible you are responsible for the following when returning your products;

- package your products safely and securely for protection during transit;
- clearly mark your return reference number on the outside of the parcel; and
- include all accessories and parts that were sold with the product.

Failure to adhere to any of these requirements could delay the processing of your request or result in its decline altogether.

### **1. UNWANTED PRODUCTS**

You can return an unwanted product to us at no charge, provided:

- it is **undamaged and unused**, with the original labels and stickers still attached;
- save in relation to Unboxed Deals, reconditioned products and used products, it is in the **original packaging**, which must be undamaged and in its original condition with all seals still intact (if applicable). Please refer to our FAQs for some examples;
- it is not missing any **accessories or parts**;

- you log a return on the Website **within 30 days** of delivery to you of the unwanted product. After 30 days, you can only return a product if it is defective; and
- it is not one of the products listed below.

Where you have changed your mind and would like a credit for a product, you can return it – **provided the product is not:**

- a foodstuff, beverage or other product intended for everyday consumption;
- a product which has been personalised for you or made to your specifications.

We will collect the product from you at no charge. Once we have inspected the product and validated your return, we will credit your account with the purchase price of the product within 10 days of the return (or refund you if that is your preference).

## **EXCHANGES**

Fashion and sportswear products can be exchanged for a different size or colour variation, provided that such variation is available. An Unboxed Deal, reconditioned product or used product can only be exchanged for a variation of the same Unboxed Deal, reconditioned product or used product, if such variation is available. In such a case, we will collect the product from you and deliver the requested product to you at no charge. If such variation is not available, we will credit your account with the purchase price of the product within 10 days of the return (or refund you if that is your preference).

We are entitled to inspect the product to validate your return. Please refer to our FAQs for some advice on making sure that your product is returnable under this section.

## **NOT WHAT YOU ORIGINALLY ORDERED?**

If we accidentally deliver the wrong product to you, or if the product is not as described on the Website, please notify us and we will collect the product from you at no charge. If the product is missing any accessories or parts, you will need to follow the process set out in the section below. Once we have inspected the product and validated your return, we will at your choice deliver the correct product to you as soon as possible (if the correct product is available); or credit your account with the purchase price of the product within 10 days of the return (or refund you if that is your preference).

## 2. PRODUCTS DAMAGED UPON DELIVERY

Should a product be damaged or missing any parts or accessories at the time of delivery / collection, **please notify us within 7 days** of such delivery / collection by logging a return on the Website. We will arrange to collect the product from you at no charge. Once we have inspected the product and validated your return, we will at your choice repair / replace the product as soon as possible (if such repair is possible/ we have the same product in stock to use as a replacement) or credit your account with the purchase price of the product (or refund you if that is your preference).

## 3. DEFECTIVE PRODUCTS

We do our best to ensure that the products we deliver to you are of a high quality, and in good working order and without defects.

What is a defect? A defect is a material imperfection in the manufacture of a product or any characteristic of a product, which makes the product less acceptable than one would reasonably be entitled to expect in the circumstances. Please refer to our FAQs for some examples.

The following will **NOT** be regarded as defects and will not entitle you to a return under this section 3:

- faults resulting from normal wear and tear;
- damage arising from negligence, user abuse or incorrect usage of the product;
- damage arising from electrical surges or sea air corrosion;
- damage arising from a failure to adequately care for the product;
- damage arising from unauthorized alterations to the product;
- where the specifications of a product, although accurately described on the Website and generally fit for its intended purpose, do not suit you; and
- in relation to Unboxed Deals or used products, signs of handling and/or repackaging.

### **Standard Warranty**

Section 56 of the Consumer Protection Act may also apply to your purchase order. Section 56 will only apply if:

- you are a natural person – **or**
- a juristic person (la company, trust or closed corporation) with an annual turnover of less than R2 million.

If you qualify as a consumer in terms of the CPA then all of our goods sold to you are sold with an implied warranty of quality against any defects for six months of normal household or business use, from the time we supplied the goods.

Defective goods are those that had a defect or were unsafe when we supplied them. A defect usually means that the goods were manufactured using materials, components or workmanship below an acceptable standard. **You must prove that goods are defective.**

If you have received a product which turns out to be defective or otherwise of poor quality (save for direct warranty products which are discussed below), please notify us as soon as reasonably possible after you become aware of the defect or poor quality, but in any event **within 6 months** after delivery / collection of the product (except in the case of an extended supplier warranty, which is set out below).

You can do so by logging a return on the Website, and we will arrange to collect the product from you at no charge. Once we have inspected the product and validated your return, we will at your choice repair / replace the product (if such repair is possible / we have the same product in stock to use as a replacement) or credit your account with the purchase price of the product (or refund you if that is your preference). If the repair / replacement takes longer than 21 days, we will get in touch with you to see if you would rather receive a credit / refund.

Where there is no extended supplier warranty period, unfortunately we cannot facilitate returns that fall outside of the 6 month period. Where you request a repair / replacement of an Unboxed Deal, reconditioned product or used product and a repair is not possible, we will see if we have a replacement Unboxed Deal, reconditioned product or used product in stock (which is the same product, of the same nature and type, as the one sold), but if we do not, we will credit / refund you. A product in perfect condition (that is not an Unboxed Deal, reconditioned product or used product) is not the same product as an Unboxed Deal, reconditioned product or used product. This is why Unboxed Deals, reconditioned products and used products are discounted, compared to products in perfect condition.

#### **4. COUPONS**

Where you have used a Fixed Coupon to pay for an order, and you or MTV UP SA later cancels your order (or part thereof) prior to delivery of the relevant product(s), or you log a return of one or more products for a credit in



accordance with the Returns Policy, the value of the Fixed Coupon will be deducted off the purchase price of the cancelled or returned product(s) (as applicable), and we will credit your account for the balance, if any (or refund you if that is your preference). We will also provide you with a replacement Fixed Coupon of the same value as the original Fixed Coupon used. MTV UP SA may in its sole discretion impose restrictions on the use of the replacement Fixed Coupon. For any subsequent cancellations or returns arising out of the same order, we will credit your account as normal with the value of the returned product (or refund you if that is your preference).

Where you have used a Percentage Coupon to pay for an order, and you or MTV UP SA later cancels your order (or part thereof) prior to delivery of the relevant product(s), or you log a return of one or more products for a credit in accordance with the Returns Policy, the value of the discount received using the Percentage Coupon will be deducted off the purchase price of the cancelled or returned product(s) (as applicable), and we will credit your account for the balance, if any (or refund you if that is your preference). We will also provide you with a replacement Fixed Coupon of the same value as the discount received using the original Percentage Coupon. MTV UP SA may in its sole discretion impose restrictions on the use of the replacement Fixed Coupon. For any subsequent cancellations or returns arising out of the same order, we will credit your account as normal with the value of the returned product (or refund you if that is your preference).

Wherever you have used a Gift Voucher to purchase a product that you later return for a refund in accordance with the Policy, we cannot refund you in cash for that portion of the purchase price which you paid using the Gift Voucher, but we will credit your account.

## **5. BUNDLES**

You may return a Bundle Deal as a whole or any of its component products individually to us. If you qualify for a credit in respect of any component product, we will credit your account with the actual purchase price (after applying any applicable saving or discount) you paid for such a product as displayed in your order history.

## **6. CHARGES AND REFUNDS**

**If you return a defective product (EXCLUDING THE LISTED PRODUCTS IN SECTION 1 DEALING WITH UNWANTED PRODUCTS) to us, but you fail to return all of the accessories and parts that were sold with that product, we are entitled to (subject to applicable law) to refuse the return, only to replace the item that you did return, or to estimate the value of the missing accessories and parts and only to credit or refund you in respect of the returned item.**

If you return a product that does not comply with this Policy, you may be liable to reimburse MTV UP SA for the cost of collecting the product from you and the cost of having the product returned to you.

Under no circumstances will donations be refunded.

Please note that we only refund to the payment method that you originally used – i.e. payment by credit card will be refunded to the same credit card, payment by EFT or COD (cash on delivery) will be refunded to your nominated bank account.

# MTV UP SA ONLINE STORE - FAQ - FREQUENTLY ASKED QUESTIONS

## ❖ HOW DO I REGISTER AS A USER ON THE MTV UP SA WEBSTORE?

To register as a user, click [here](#) or on **Register** at the top of the MTV UP SA website and create an account. We'll need your full name, e-mail address, a password of 5 characters, your gender and at least one contact number.

## ❖ HOW DO I BUY SOMETHING FROM THE MTV UP SA WEBSTORE?

1. FIND THE PRODUCT(S) YOU WOULD LIKE TO BUY.

2. ADD TO CART.

Found the products you want to buy? Click on **Add to cart**. Your shopping cart contains all the products that you have selected to buy. Once you've added a product to your shopping cart, you can go back and keep searching and adding to your cart. You can access the contents of your shopping cart at any time by clicking on the cart button at the top right of any page on the MTV UP SA website.

3. CHECKOUT.

3.1. Click Proceed to Checkout after you've reviewed the items in your Shopping Cart.

3.2. If prompted, sign in to your account or create a new account if this is your first order.

3.3. Choose your delivery method:

3.3.1. Courier delivery to your door

3.4. Choose your payment method. Be sure you've applied any coupon codes you want to use on your order.

3.5. Review your order details and complete payment.

## ❖ SHIPPING AND DELIVERY

1. WHAT WILL DELIVERY COST ME?

<b>Delivery Option</b>	<b>I live in a Main Centre</b>	<b>I live in a Regional Area or Remote Area</b>
Standard (FREE for orders R5000 or more)	R60	R60
Economy (FREE for orders R5000 or more)	R60	R60
Weekend	R100	N/A
Same Day	R120	N/A
Express	R95	N/A

## 2. WHEN WILL I RECEIVE MY PRODUCT?

Our delivery and times can vary depending on stock availability. Estimates are provided below to help you shop, but always check your order's Estimated Delivery Date during checkout for the most accurate delivery information.

<b>Standard Delivery</b>	
<b>Delivery Destination</b>	<b>Delivery Time</b>
Cape Town, Johannesburg, Pretoria	2-5 working days
Regional Area	2-6 working days
Remote Area	3-7 working days

## 3. WHAT HAPPENS IF PRODCUT IS MISSING FROM MY ORDER?

If you have received an incomplete delivery you can notify us [here](#), then our friendly customer service team will be in touch with you to assist.

#### 4. HOW DO I TRACK MY ORDER ONLINE?

Once we've received your order, we'll send you an e-mail with tracking details. If in doubt, contact us directly at [hello@mtvup.co.za](mailto:hello@mtvup.co.za) .

Please note:

- The countdown in terms of the shipping period begins once your payment has been authorised. For credit cards this means that once the bank gives us an authorisation code. For cash deposits and Internet transfers this means once the funds reflect in our bank account. For cheque deposits, this means once the funds have been cleared, which is usually only 7 days after the deposit.
- Business days are defined as Mondays to Fridays, excluding public holidays.

#### ❖ GENERAL

##### 1. WHAT IF THE PRODUCT I ORDERED IS OUT OF STOCK?

If a product goes out of stock, it will reflect as such on the website or will no longer be visible on the website. If you have already ordered the product on the website when it goes out of stock, we'll let you know directly. You will then have the option to be refunded or credited for any amount already paid by you, or you can wait until the product comes into stock again.

##### 2. WHAT DO I DO IF I FORGOT MY PASSWORD?

On the Login page click on the link next to 'Forgot your password?' and enter the email address that your account was registered with and click '**SUBMIT**'. We will email you a link to this email address, which you can click on to reset your password.