

TERMS OF USE

1 INTRODUCTION

- 1.1 Welcome to the Magique™ Mist website (“the Website”) at <http://www.magiquemist.co.za>. Please read these terms and conditions (“Terms and Conditions”) so that you can understand how they apply to your use of the Website and the products that may be sold to you on the Website.
- 1.2 Fresca Nube Propriety Limited t/a Magique™ Mist, registration number 2010/017467/07 (“Fresca”) is a private company duly incorporated and registered in the Republic of South Africa, with its registered address at 11 Jasper van der Westhuizen Street, Potchindustria, Potchefstroom, 2351. Fresca operates its business from Unit 30 Scientia Technopark, Meiring Naudé Road, Brummeria, Pretoria 0028. The sole director of Fresca is Mr Leon Lubbe. Fresca can be contacted on 012 349 2491 or sales@magiquemist.co.za. Fresca owns and operates the Website.
- 1.3 Fresca is a manufacturer, installer and supplier of, inter alia, high pressure dry misting equipment and components.
- 1.4 Please browse or use the Website. You may use the Website for your own personal, non-commercial shopping and information purposes only, and for no other purpose. By using the Website you indemnify Fresca against all loss, damage, expense, harm, claim and any other cost whatsoever that you may incur as a result of your use of the Website and/or its contents contrary to these Terms and Conditions.
- [NOTE: This clause 1.4 places various risks, liabilities, obligations and legal responsibilities on you]**
- 1.5 By using the Website, you confirm that you have read and understood the Terms and Conditions and agree to be bound by them. These terms and conditions constitute the whole of the agreement between Fresca and you 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 and Conditions not incorporated in these Terms and Conditions shall be binding on Fresca and yourself.
- 1.6 Fresca reserves the right to suspend the Website or any part thereof at any time, at its sole discretion.

- 1.7 Some of the products which appear on the Website are supplied by third parties. These suppliers have also agreed to these Terms and Conditions.

2 INTERPRETATION AND DEFINITIONS

Unless the context otherwise requires, words used herein importing the singular shall include the plural and vice versa, a natural person shall include an artificial person and vice versa and the one gender shall include the other gender and vice versa. In these Terms and Conditions a reference to –

- 2.1 “business day” means any day other than a Saturday, Sunday or public holiday;
- 2.2 “business hours” means the hours between 08h30 and 17h00 on a Monday to Thursday, and between 08h30 and 15h00 on a Friday. Any reference to time shall be based upon South African Standard Time;
- 2.3 “delivery partner” means TNT Express Worldwide S A Proprietary Limited a courier company, registration number 1975/001083/07 or, Seabourne Express Proprietary Limited Ltd a courier company, registration number 2006/014523/07, both of which are duly incorporated in the Republic of South Africa and/or any other courier company that Fresca may appoint from time to time;
- 2.4 “ECT Act” means the Electronic Communications and Transactions Act 25 of 2002, as amended, from time to time;
- 2.5 “order” means an order submitted by you offering to purchase a product or products from this Website at the stated price;
- 2.6 “products” means the products to be found for sale on this Website;
- 2.7 “supplier” means any supplier from whom Fresca sources products.
- 2.8 “VAT” means value added tax as defined in the Value Added Tax Act, Act 89 of 1991, as amended from time to time.

3 REGISTRATION AND ORDER

- 3.1 When making an order, you must be over 18 years of age, possess a valid credit card or be authorised to use a valid credit or debit card. To place the order you should follow the given instructions.
- 3.2 Fresca shall have no obligation, should any order be received by it, reflecting your name as the party placing the order, to verify that you have placed the order.
- 3.3 When you order a product from this Website, you are offering to buy it at the price stated on the Website.
- 3.4 The full price payable for a product (excluding delivery) can viewed at the time of placing the order as the pricing is “live”. Pricing will always be displayed or quoted as including VAT.
- 3.5 Fresca reserves the right to refuse your offer to purchase a product from the Website catalogue for any reason whatsoever which includes but is not limited to the following –
- 3.5.1 the product being sold out or stock being unavailable from Fresca or its suppliers;
 - 3.5.2 inability to obtain authorisation of payment; and/or
 - 3.5.3 the identification of an error within the product information, including price and/or promotion.
- 3.6 Should Fresca accept your offer (which it shall not be obliged to do) to purchase a product from the Website, a sale agreement (“the contract”) will be concluded between you and Fresca.

4 **METHODS OF PAYMENT**

- 4.1 Payment can be made online using Visa, Mastercard credit cards or via electronic funds transfer (EFT) into the bank account indicated on the Website, provided that proof of payment is sent to Magique™ Mist, at sales@magiquemist.co.za.

4.2 Fresca will debit the total value of your order against the payment card tendered by you during the check-out process. All credit card payments are processed using PayPal, which uses a strict form of encryption called 3D Secure. No credit card details will be stored on the Website. You can access PayPal's security service via the link appearing on the Website.

4.3 By submitting your order, identity number and payment card details, you warrant that you are authorised to make payment with the payment card and that there are sufficient funds available to pay for the order.

5 DELIVERY

5.1 Once Fresca has received and accepted your order, it will arrange for the delivery of the products ordered through a delivery partner.

5.2 Delivery shall take place during business hours on business days. No deliveries shall take place on public holidays or days which are not business days.

5.3 For those items that are in stock, Fresca aims to deliver regular parcels to central areas in South Africa within 2-4 business days, and special freight items within 5-7 business days, from the date your payment has been received. Items that are custom made may take longer to accommodate for item specific manufacturing time. For those products that are made to order, or are not currently in stock, please see the estimated availability date for each product. For special freight products, the delivery partner will contact you directly to agree on an appropriate delivery time.

5.4 The cost of delivery is as indicated on the Website.

5.5 Products will be delivered to the delivery address provided by you when placing your order. If, for any reason, the delivery partner cannot reach you, Fresca will provide you with instructions to either collect the products directly from the delivery partner (in case of regular parcels) or to re-arrange the delivery (in case of special freight). In these situations, Fresca reserves the right to charge you for any additional costs incurred (e.g. delivery and storage) or to cancel the contract, in which case, Fresca will fully refund to you the net amount (i.e. the amount you paid minus delivery costs or storage costs).

- 5.6 Upon delivery of the order to the delivery address, you will receive Fresca's delivery note showing the products delivered, any non-available products, (and any delivery costs, if applicable), the VAT thereon and the amount debited from your payment card. You will also be asked to sign a delivery form, in which you confirm that the products were delivered in the correct condition (without obvious defects or damage).
- 5.7 For verification purposes, the person accepting delivery at the delivery address may be required to produce a form of identification. Any person other than yourself who receives the products at the delivery address is presumed to be authorised to accept delivery on your behalf. Should no-one be in attendance at the time of delivery, the delivery partner will keep the products and leave a notice at the delivery address to this effect. The delivery partner will attempt to contact you to make new arrangements for delivery or collection. Fresca reserves the right to charge an additional delivery fee should it be required in these circumstances.
- 5.8 Time is not of the essence for delivery of the products to you. Fresca will not be liable for any delay in the delivery of the products. Your only remedy in this case is limited to delivery being affected at a later agreed time at no additional charge.
- 5.9 All risk in and ownership of the products shall pass to you upon delivery of the products to you, except, where delivery is delayed due to your breach of obligations under these Terms and Conditions. Risk shall pass to you on the date when delivery is made. From the time when risk passes to you, Fresca will not be liable for loss or destruction of the product(s).
- 5.10 It is your responsibility to ensure that the products are adequate and suitable for your purposes and meet your individual requirements. Fresca does not warrant that the products will meet your individual requirements. You acknowledge that the products are standard and not customised or custom made to fit any particular requirements that you may have.

[NOTE: Clauses 5.8, 5.9 and 5.10 limits and excludes your rights and remedies and places various risks, liabilities, obligations and legal responsibilities on you]

6 RETURNS AND EXCHANGE POLICY

6.1 Unused products

6.1.1 Fresca wants you to feel perfectly confident when shopping on the Website. Therefore, Fresca offers you the option to return any unopened, unused product in its original packaging that you bought from Fresca for any reason within 7 days of receiving the item. Once Fresca receives the item, it will fully refund to you the amount you paid for the product(s) less the inbound delivery costs.

6.1.2 The procedure for returning an item is as follows –

6.1.2.1 contact Fresca at sales@magiquemist.co.za or phone Fresca on 012 349 2491 and quote your original invoice and waybill number;

6.1.2.2 Fresca will arrange a suitable time and place for the item to be collected by its courier;

6.1.2.3 a courier will collect the item from you at your designated address. Please note that you will not need to pay the courier directly for returning your merchandise, Fresca will pay the courier and deduct the cost from your final credit once Fresca has received and processed your returned merchandise. Make sure that you insert the original order confirmation page that was emailed to you upon purchase into the package;

6.1.2.4 it is your responsibility to ensure that the product is correctly re-packaged in its original packaging to ensure its safe return to Fresca's suppliers.

6.1.3 The product you wish to return or exchange must be in exactly the same condition that you received it, in that it is new and unused. Fresca will not accept the return of any products which appear to have been used.

6.2 Defective or faulty products manufactured by Fresca

- 6.2.1 Fresca's self manufactured products and/or components thereof (each an "internal product") carry a 3 month manufacturer's warranty, therefore any such internal product which is faulty or defective may be returned, refunded or repaired within 3 months of delivery. Fresca will not accept, repair or exchange an internal product which is damaged as a result of fair wear and tear, misuse, failure to use in accordance with the manufacturer's instructions, abnormal use, or failure to take reasonable care.
- 6.2.2 To report a faulty or defective internal product you must send an email to sales@magiquemist.co.za (after which one of Fresca's consultants will contact you), or phone Fresca directly on 012 349 2491.
- 6.2.3 You may be required to fill in a returns form and to send Fresca images of the damage for further assessment. Once assessed and approved by Fresca's consultants, Fresca will contact you to proceed with the returns process. Fresca will, at your election, either arrange a replacement or a refund for the full sale price. Should you not make an election timeously, a refund for the full sale price will be arranged by Fresca. Please do not attempt to return an internal product before speaking to one of Fresca's consultants (you may be responsible for any associated expenses if you do so).
- 6.2.4 Fresca will not refund or replace an internal product where in Fresca's reasonable opinion such product has, following the sale to you, become of unacceptable quality due to fair wear and tear, misuse, failure to use in accordance with manufacturer's instructions, using it in an abnormal way or failure to take reasonable care. In this case, you will be responsible for return freight costs.
- 6.3 **Defective or faulty products not manufactured by Fresca**
- 6.3.1 Fresca gives no warranties and/or guarantees in respect of any product and/or component thereof (an "external product") which is not manufactured by Fresca and Fresca shall have no liability, of any nature whatever, in respect of any such external product. The relevant manufacturer of an external product may provide certain warranties and/or guarantees in respect thereof.

- 6.3.2 To report a faulty or defective external product you may –
- 6.3.2.1 send an email to sales@magiquemist.co.za (after which one of Fresca's consultants will contact you), or phone Fresca directly on 012 349 2491 pursuant to which, a Fresca consultant will use all reasonable endeavours to contact the relevant wholesale supplier, manufacturer and/or importer of the external product to arrange for the return of the external product to such wholesale supplier, manufacturer and/or importer of the external product; or
- 6.3.2.2 contact the relevant wholesale supplier, manufacturer and/or importer of the external product directly.
- 6.3.3 Notwithstanding anything to the contrary contained herein –
- 6.3.3.1 an external product must be returned by you directly to the relevant wholesale supplier, manufacturer and/or importer of the external product;
- 6.3.3.2 save for the assistance contemplated in clause 6.3.2.1, Fresca shall not facilitate, in manner whatever, the return process of an external product;
- 6.3.3.3 Fresca shall have no liability, of any nature whatever, to you and/or any third party in respect of the return, whether for replacement or repair, of any external product;
- 6.3.3.4 should an external product not be approved, for any reason whatever, by the relevant wholesale supplier, manufacturer and/or importer for replacement or repair, Fresca shall have no liability, of any nature whatever, to you and/or any third party in respect of any such external product.
- 6.3.4 Notwithstanding anything to the contrary contained herein, Fresca shall have no liability of any nature whatever in respect of any product, whether manufactured by Fresca or not, by reason of any failure to use any such product in accordance with the manufacturer's instructions or as a result of using it in an abnormal way or for an improper purpose.

7 AVAILABILITY

Fresca cannot always guarantee the availability of products from the Website, as Fresca relies on the stock of its suppliers. Fresca will update the Website as soon as it becomes aware of any product becoming unavailable. Should Fresca be unable to supply each and every item ordered, in the quantities ordered, you nevertheless agree to accept delivery and make payment for the products correctly delivered.

8 INTELLECTUAL PROPERTY

Fresca either owns or is licensed the rights to use all intellectual property and/or other material on the Website. You are only permitted to view, print or store electronically a copy of any information on the Website, including these Terms and Conditions, solely for your personal, lawful, non-commercial use and a failure to do so will constitute an unlawful infringement of the intellectual property rights of Fresca or its licensors.

9 USE OF FRESCA'S LOGOS, CONTENT AND IMAGES

You cannot use the content of the Website, Fresca logos or any other images that appear on the Website without the prior written consent of Fresca. a Failure to comply with this will constitute an unlawful infringement of the intellectual property rights of Fresca and its licensors.

10 ADVERTISING AND HYPERLINKS

External hyperlinks and advertising may appear on the Website. These hyperlinks do not constitute any relationship between Fresca and any linked third party or any endorsement by Fresca of such third party. Fresca does not necessarily endorse such third parties or their products and/or services. Your reliance on any information via the external hyperlinks, advertising or otherwise contained in such material is entirely at your own risk.

11 JURISDICTION

These Terms and Conditions are governed by and construed under the laws of the Republic of South Africa.

12 **FORCE MAJEURE**

- 12.1 Fresca shall not be liable to you for any breach, hindrance or delay in the performance of any obligation attributable to any cause beyond the reasonable control of Fresca, including without limitation any natural disaster and unavoidable incident, actions of third parties (including without limitation hackers, suppliers, governments, quasi-governmental, supra-national or local authorities), insurrection, riot, civil commotion, war, hostilities, warlike operations, national emergencies, terrorism, piracy, arrests, restraints or detainments of any competent authority, strikes or combinations or lock-out of workmen, epidemic, fire, explosion, storm, flood, drought, weather conditions, earthquake, natural disaster, accident, mechanical breakdown, third party software, failure or problems with public utility supplies (including electrical, telecoms or Internet failure), shortage of or inability to obtain supplies, materials, equipment or transportation ("Event of Force Majeure"), regardless of whether the circumstances in question could have been foreseen.
- 12.2 Either you or Fresca may terminate any contract forthwith by written notice to the other in the event that the Event of Force Majeure lasts for a period of two business days or more, in which event neither you nor Fresca shall be liable to the other by reason of such termination (other than for the refund of a product already paid for by you and not delivered).

13 **NOTICES**

Any notice under these Terms and Conditions shall be in writing and may be served by personal delivery or by pre-paid registered letter or by email to the relevant party at the address or email of the relevant party last known to the other. Fresca chooses 11 Jasper van der Westhuizen Street, Potchindustria, Potchefstroom, 2351 as its physical address for receipt of legal service.

14 **TERMS AND CONDITIONS PRIVACY POLICY & INFORMATION SECURITY**

- 14.1 Fresca requests your name, telephone number, home address, email address, age, delivery address and payment method details when you want to make a purchase on the Website. Fresca may obtain information about your usage of the Website for reasons Fresca will communicate to you.

- 14.2 Fresca may also email you information about products and details of promotions and special offers. If you do not wish to be contacted for these purposes, you may –
- 14.2.1 click on the “unsubscribe” button found at the bottom of all email messages and email newsletters;
- 14.2.2 send an email to Fresca at Sales@magiquemist.co.za and write “unsubscribe” in the subject heading; or
- 14.2.3 call Fresca on 012 349 2491.
- 14.3 Any information that you upload on the Website including any payment card information will be stored on a secure server. Fresca’s secure server encrypts your payment card details.
- 14.4 Fresca will not disclose, sell or rent your personal information to third parties without your consent unless Fresca is compelled to do so by law. Fresca may do so if you have granted consent thereto.
- 14.5 Fresca cannot guarantee the absolute security of any information you exchange with it. Fresca will however take reasonable steps in an attempt to protect your personal information and/or credit card details.
- 14.6 A full history of all your transactions with Fresca will be retained by Fresca for a period of 10 years from the date of the last transaction and can be requested from Fresca.
- 14.7 It is expressly prohibited for any person, to gain or attempt to gain unauthorised access to any page on the Website, or to deliver or to attempt to deliver any unauthorised, damaging or malicious code to the Website. Any person who delivers or attempts to deliver any unauthorised, damaging or malicious code to the Website or attempts to gain unauthorised access to any page on the Website shall be held liable for all damage and loss suffered by us as a result thereof.

[NOTE: This clause 14.7 places various risks, liabilities, obligations and legal responsibilities on you]

15 ACCURACY OF WEBSITE CONTENT

- 15.1 Fresca does not warrant that the content or information displayed on the Website is always accurate, complete and/or current.
- 15.2 In the unlikely event that the price of the products which are the subject matter of any order changes before Fresca accepts such order, Fresca will contact you and ask you to confirm that you wish to proceed at the amended price.
- 15.3 Fresca reserve the right at any time to change or discontinue without notice, any aspect or feature of the Website. No Information contained on the Website shall be construed as advice and same is offered for information purposes only.

16 AMENDED OR UPDATED TERMS

- 16.1 Fresca may periodically update or change the Terms and Conditions without notice. You should check them from time to time, as your continued use of the Website will mean you accept any updated or revised Terms and Conditions.
- 16.2 Accordingly you agree to review these Terms and Conditions periodically, and your continued access or use of the Website shall be deemed to be your acceptance, from time to time, of the amended Standard Terms and Conditions.

17 DISCLAIMERS AND EXCLUSIONS OF LIABILITY

- 17.1 Use of the Website is entirely at your own risk. Fresca makes no representations or warranties of any kind, whether express or implied. Fresca accepts no liability, to the extent permitted by law, for any damages, howsoever arising, whether direct, indirect, incidental, special or consequential loss from the access or use of the Website or the purchase of any of the products or services.
- 17.2 The Website is supplied on an "as is" basis and has not been compiled or supplied to meet your individual requirements. It is your sole responsibility to satisfy yourself that the service available from and through the Website will

meet your individual requirements and be compatible with your hardware and/or software.

- 17.3 To the extent permitted by law, you hereby agree to indemnify Fresca against all claims of whatsoever nature which may be made against it by any third party arising out of the use of the products sold by Fresca to you and/or the services provided by Fresca to you, unless such loss is attributable to the gross negligence of Fresca.

[NOTE: This clause 17 limits and excludes your rights and remedies and places various risks, liabilities, obligations and legal responsibilities on you]

18 GENERAL

- 18.1 These Terms and Conditions shall commence from the date on which they are published on the Website and continue indefinitely, as amended by Fresca from time to time, for so long as the Website exists and is operational. Fresca shall be entitled to terminate these Terms and Conditions and/or shut down the Website at any time (subject to still processing any orders then already placed and accepted by Fresca).
- 18.2 No failure or delay by Fresca or you in exercising any right under these Terms and Conditions or a contract shall operate as a waiver of such right or extend to or affect any other or subsequent event or impair any rights or remedies in respect of it or in any way modify or diminish the rights of Fresca or yourself under these Terms and Conditions or a contract.
- 18.3 If any clause in these Terms and Conditions is declared by any court of competent jurisdiction to be invalid or unenforceable, such invalidity or unenforceability shall in no way affect any other clause or part of any clause, all of which shall remain in full force and effect, so long as these Terms and Conditions shall be capable of continuing in effect without the unenforceable term.
- 18.4 You shall not assign, transfer, novate, charge, sub-contract, create any trust over or deal in any other manner with these Terms and Conditions or all or any of your rights or obligations under these Terms and Conditions.

18.5 Any and all copyright subsisting in the Website vests in Fresca or its licensors, as the case may be, and all rights not expressly granted are reserved.

19 **ELECTRONIC COMMUNICATIONS AND TRANSACTIONS ACT 25 OF 2002**

19.1 These terms are subject to the provisions of the ECT Act and any of the terms that are in conflict with any of the compulsory provisions of the ECT Act will be deemed to have been modified so as to comply with such provisions of the ECT Act.

19.2 In terms of the ECT Act, Fresca will provide you with the opportunity to review the entire transaction, correct any mistake and withdraw from the transaction before placing an order.