



M O U T H G U A R D S

## MAX<sup>®</sup> Mouthguards Terms and Conditions

### 1. Introduction

- 1.1. This website can be accessed a [maxmouthguards.co.za](http://maxmouthguards.co.za), related mobi-sites and software applications (the “**website**”) and is owned and operated by MAX Sport Protection (Proprietary) Limited (“**Max Spot Protections**”, “**we**”, “**us**” and “**our**”).
- 1.2. These Website Terms and Conditions (“**Terms and Conditions**”) govern the ordering, sale and delivery of mouthguards, and the use of the Website.
- 1.3. These Terms and Conditions are binding 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 agreed to be bound by these Terms and Conditions.**
- 1.4. The Website enables you to shop online for an extensive range of goods including mouthguards and more (“**Goods**”).

### 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 (the “**CPA**”). Nothing herein should however be read or interpreted to extend to any party other than the consumers (as defined in the CPA) the rights attributed to them (consumers) in terms of the CPA.
- 2.2. **These Terms and Conditions contain provisions that appear in similar text and style to this clause and which:**
  - 2.2.1. **May limit the risk or liability of the Company or a third party; and/or**
  - 2.2.2. **May create risk or liability for the User; and/or**
  - 2.2.3. **May compel the User to indemnify the company of a third party; and/or**
  - 2.2.4. **Serves as an acknowledgement, by the User, of a fact.**
- **Your attention is drawn to these Terms and Conditions because they are important and should be carefully noted:**
- 2.3. If there is any provisions in these Terms and Conditions that you do not understand, it is our responsibility to ask the company 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 the User or the Company in terms of the CPA.
- 2.5. The permission to the use of this Website is granted to the User subject to Terms and Conditions herein stated by accepting the Terms and Conditions. MAX Sport Protection assume that the User will take full responsibility to maintain the Terms and Conditions herein stated. Should the User abuse or neglect this responsibility, MAX Sport Protection will enforce the right of admission without notifying the User. You must not use this Website if you do not agree to the Terms and Conditions.

### 3. Returns



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- We are confident that you will find our products satisfying. Should you however experience any problem or concern with any of our products, please refer to the options provided below:
  - Items will only be accepted for refund or exchange once proof of purchase is provided to us. Items that were used extensively may not be considered for a refund
  - 3.1. Goods purchased by way of special arrangement or custom made to order will only be replaced if defective.
  - 3.2. If a product is delivered to you that does not correspond to that of what was ordered (i.e. it's not the product you ordered), MAX Sport Protection will arrange to collect the product from you, and they will deliver the correct product to you within a reasonable time frame.
  - 3.3. If you have used a product and found it to be damaged or faulty we will collect or have the product collected at our expense and either replace, refund or repair the item, depending on the circumstance.
- 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 correct information and personal details to the Company Website. 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 please ensure you enter correct information when purchasing Goods online. When incorrect username and password is entered, the Website may restrict or deny your access.
  - 4.5. **You agree that the company will accept and process your order for Goods, once the correct username and password relating to your account have been entered, irrespective of whatever the use of the username and password is unauthorized or fraudulent, you will be liable for payment of such order, save when the order is cancelled by you in accordance with these Terms and Conditions.**
  - 4.6. You agree to notify the Company immediately upon becoming aware of or reasonable suspecting any unauthorized 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 authorized Company representative



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(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 authorized Company representative.

### 5. Conclusion of Sales and Availability of Stock

- 5.1. Registered Users may place orders for Goods, which MAX Sport Protection or the Third-Party Seller may accept or reject. Whether or not MAX Sport Protection or the Third-Party seller 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 authorization by MAX Sport Protection for the Goods.
- 5.2. **Note: MAX Sport Protection or the Third-Party Seller will indicate the acceptance of your order by delivering the Goods to you or allowing you to collect them, and only at the point will an agreement of sale between you and MAX Sport Protection or the Third-Party Seller came in effect (the "Sale"). This is regardless of any communication from MAX Sport Protection stating that your order or payment has been confirmed. MAX Sport Protection will indicate the rejection of your order (by MAX Sport Protection itself or the Third-Party Seller) by cancelling it and, as soon as possible thereafter, refunding you for any amount already paid.**
- 5.3. Placing Goods in a 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 MAX Sport Protection or the Third-Party Seller 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.
- 5.4. **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 MAX Sport Protection, MAX Sport Protection 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, MAX Sport Protection will notify you and you will be entitled to a refund of any amount already paid by you for such Goods.**
- 5.5. **In the case of Goods for sale by a Third-Party Seller, MAX Sport Protection accordingly bears no liability for any inaccuracies in the information supplied to you.** Consequently, should you order any Goods from Third-Party Seller which are in fact sold-out, any resulting dispute should be resolved between you and the relevant Third-Party Seller, your respective rights and obligations being as set out in these Terms and Conditions.

### 6. Payment

- 6.1. We are committed to providing secure online payment facilities. All transactions are encrypted using appropriate encryption technology.
- 6.2. Whether the Goods are for sale by MAX Sport Protection or a Third-Party Seller, payment can be made for Goods via:



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- 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 authorize and/or verify and validity of payment. In such cases we are entitled to withhold delivery until such time as the additional information is acquired and authorization is obtained by us for the amounts. If we do not receive authorization your order for the Goods will be cancelled. **You warrant that you are fully authorized to use the credit card supplied for purposes of paying the Goods. You also warrant that your credit card has sufficient funds available 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. MAX Mouthguards will not accept your order if payment has not been received;
  - 6.2.4. Instant EFT;
  - 6.2.5. Cash on delivery; by selecting this option, you undertake to ensure that you have the exact cash on hand n the day/time of the impression session including R100.00 surcharge for administration purposes.
  - 6.2.6. MAX Sport Protection Vouchers
  - 6.2.7. SnapScan: please use your order number as payment reference.
  - 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 email [admin@mamouthguards.co.za](mailto:admin@mamouthguards.co.za) 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. MAX Sport Protection offers 2 (two) methods of delivery of Goods to you. You may select delivery via;
    - 7.1.1. Courier; or
    - 7.1.2. Self-collection
  - 7.2. For more information about delivery, please see out 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.
  - 7.3. When your order is accepted, MAX Sport Protection or the Third-Party Seller will deliver the Goods to you as soon as reasonably possible, but no later than 14 (fourteen) days of receipt of your payment (“Delivery Period”). We will notify you if we are unable to deliver the Goods during the Delivery Period.
  - 7.4. MAX Sport Protection’s obligation to deliver a production to you is fulfilled when we deliver the product to the physical address nominated by you for delivery of the order. **MAX Sport Protection is not responsible for any loss or unauthorized use of a product, When the product has been delivered to the physical address nominated by you.**
- 8. Errors**



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

8.2. MAX Sport Protection shall not be bound by any incorrect information regarding our Goods displayed on any third-party website.

### 9. Gift Vouchers

9.1. MAX Sport Protection may from time to time make physical or electronic gift vouchers (“Gift Vouchers”) available for use on the Website towards the purchase of MAX Sport Protection Goods. Gift Vouchers can only be redeemed while they are valid, and their expiry dates cannot be extended. More specifically;

9.2. Gift Vouchers that are purchased by registered Users are valid for 3 years after Sale. Gift Vouchers that MAX Sport Protection gives away for free are valid for the period stated thereon. In each case, if your Voucher has not been used within that period, it will expire.

9.3. Gift Vouchers cannot be used to buy other Gift Vouchers or Coupons. They do not accrue interest and are not refundable for cash once purchased. If your Gift Voucher value is insufficient for the order you wish to place, you may make up the difference by paying via one of our other payment methods.

9.4. **MAX Sport Protection is not responsible for any harm due to the loss, unauthorized use or unauthorized distribution of a Gift Voucher, after it has delivered the Gift Voucher to you or the email address nominated by you.**

9.5. [Click here](#) for instructions on how to use/redeem a Voucher/Coupon.

### 10. Ownership and Copyright

10.1. 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 MAX Sport Protection, its advertisers and/or sponsors and/or is licensed to MAX Sport Protection.

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

10.3. Any use, distribution or reproduction of the Website Content is prohibited unless expressly authorized 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](#) by email [admin@maxmouthguards.co.za](mailto:admin@maxmouthguards.co.za)

10.4. Where any of the Website Content has been licensed to MAX Sport Protection or belongs to any third party imposes from time to time and you agree to comply with such third-party Terms and Conditions

### 11. Disclaimer

11.1. **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.**



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- 11.2. Whilst MAX Sport Protection take reasonable measures to ensure that the content of the Website is accurate and complete, MAX Sport Protection 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 any such representations or warranties are made by MAX Sport Protection's representatives, MAX Sport Protection shall not be bound thereby.
- 11.3. **MAX Sport Protection 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.**
- 11.4. **Although Goods sold for 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, by no limited to, the implied warranties of merchantability, fitness for a particular purpose, completeness, or non-infringement, as may be allowed in law.**
- 11.5. Any views or statements made or expressed on the Website are not necessarily the views of MAX Sport Protection, its directors, employees and/or agents.
- 11.6. **In addition to the disclaimers contained elsewhere in these Terms and Conditions, MAX Sport Protection also make no warranty or representation, whether express or implied, that the information of files available on the Website are free of viruses, spyware, malware, trojans, destructive material or any other data or code which is able to corrupt, destroy, compromise, disrupt, disable, harm, jeopardize 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, jeopardize, 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 willful misconduct of MAX Sport Protection, its employees, agents or authorized representatives. MAX Sport Protection 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.**

## 12. Linking to Third-Party Websites

- 12.1. 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 MAX Sport Protection is not responsible for the practices and/or privacy policies of those Third-Party Websites or the "cookies" that those sites may use.
- 12.2. **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.**

## 13. Limitation of Liability



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- 13.1. **MAX Sport Protection 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 willful misconduct of MAX Sport Protection, its employees, agents or authorized representatives. You are encouraged to contact us to report any possible malfunctions or errors by way of our [Contact Us](#) page.**
- 13.2. **MAX SPORT PROTECTION 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 WEBSITES 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.**
- 13.3. **YOU HEREBY INDEMNIFY MAX SPORT PROTECTION 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.**

### 14. Governing Law and Jurisdiction

- 14.1. These Terms and Conditions and out 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 institute by either party against the other, arising from any of these Terms and Conditions.
- 14.2. In the event of any dispute arising between you and MAX Sport Protection, you hereby consent to the non-exclusive jurisdiction of the High Court of the Republic of South Africa (Western Cape Division, Cape Town) notwithstanding that the quantum in the action or proceedings may otherwise fall below the monetary jurisdiction of the court.
- 14.3. Nothing in this clause 23 or the Terms and Conditions limits your right to approach any court, tribunal or forum of competent jurisdiction in terms of the CPA.

### 15. Notices

- 15.1. MAX Sport Protection hereby selects 172 Imam Haron Street, Claremont, Cape Town, as its address for the service of all formal notices and legal processes in connection with these Terms and Conditions ("legal address"). MAX Sport Protection may change this address from time to time by updating these Terms and Conditions.
- 15.2. 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 MAX Sport Protection not less than 7 days' notice in writing.
- 15.3. Notices must be sent either by hand, prepaid registered post or email and must be in English. All notices sent:
  - 15.3.1. By hand will be deemed to have been received on the date of delivery;
  - 15.3.2. By prepaid registered post, will be deemed to have been received 10 days after the date of posting;
  - 15.3.3. By email will be deemed to have been on the date indicated in the "Read Receipt" notification. **ALL EMAIL COMMUNICATIONS BETWEEN YOU AND US MUST MAKE USE OF THE "READ RECEIPT" FUNCTION** to serve as proof that an email has been received.

### 16. Complaints



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- 16.1. If you have a complaint about the goods of services provided by us or require information regarding our internal complaints-handling process, please get in touch with us via our [Contact Us](#) Page on the Website or you can contact our call center on 021 683 0273.

### 17. Information

- 17.1. For the purposes of the ECT Act, MAX Sport Protection's information is as follows, which should be read in conjunction with its product descriptions and other Terms and Conditions contained on the Website.
- 17.2. **Full name:** MAX Sport Protection (Pty) Ltd, a private company registered in South Africa with registration number 2013/228920/07
- 17.3. **Main business:** Mouthguard manufacturer and Online retailer
- 17.4. **Physical address for receipt of legal service (also postal and street address):** 172 Imam Haron Street, Claremont, Cape Town (marked for attention: CEO and Legal)
- 17.5. **Office bearers:** Julia Horsfall
- 17.6. **Phone number:** +27 21 683 0273
- 17.7. **Email address:** [admin@maxmouthguards.co.za](mailto:admin@maxmouthguards.co.za)

### 18. General

- 18.1. MAX Sport Protection 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.
- 18.2. You may not cede, assign or otherwise transfer your rights and obligations in terms of these Terms and Conditions to any third party.
- 18.3. Any failure on the part of you or MAX Sport Protection to enforce any right in terms hereof shall not constitute a waiver of that right.
- 18.4. If any Terms or Conditions contained herein is declared invalid, the remaining Terms and Conditions will remain in full force and effect.
- 18.5. No variation, addition, deletion, or agreed cancellation of the Terms and Conditions will be of any force of effect unless in writing and accepted by or on behalf of the parties hereto.
- 18.6. 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 to stopped from exercising any of its rights against the grantee which may have arisen in the past or which might arise in the future.
- 18.7. These Terms and Conditions contain the whole agreement between you and MAX Sport Protection and no other warranty or undertaking is valid, unless contained in this document between the parties.