



## **TERMS AND CONDITIONS FOR PROVISION OF PRODUCTS AND USE OF PLATFORMS BY MIJOVY (PTY) LTD**

These Terms and Conditions constitute a binding legal agreement between you, our customer, and MIJOVY (PTY) LTD.

### **1. DEFINITIONS**

- 1.1. **“Account”** – means an account created through one of our Platforms, by a Registered Account Holder.
- 1.2. **“Intellectual Property Rights”** - means patents, industrial designs, copyrighted works and trade marks (whether registered or not), know-how and trade secrets.
- 1.3. **“Mijovy Tape Cutter”** – means our flagship product, a simple and cost-effective tape cutter, protected in terms of the Patents Act 57 of 1978, as provisional patent application no 2019/06119.
- 1.4. **“Personal Information”** – means information relating to an identifiable, living, natural person, and where it is applicable, an identifiable, existing juristic person, including, but not limited to –
  - 1.4.1. information relating to the race, gender, sex, pregnancy, marital status, national, ethnic or social origin, colour, sexual orientation, age, physical or mental health, well-being, disability, religion, conscience, belief, culture, language and birth of the person;
  - 1.4.2. information relating to the education or the medical, financial, criminal or employment history of the person;
  - 1.4.3. any identifying number, symbol, e-mail address, physical address, telephone number, location information, online identifier or other particular assignment to the person;
  - 1.4.4. the biometric information of the person;
  - 1.4.5. the personal opinions, views or preferences of the person;
  - 1.4.6. correspondence sent by the person that is implicitly or explicitly of a private or confidential nature or further correspondence that would reveal the contents of the original correspondence;
  - 1.4.7. the views or opinions of another individual about the person; and
  - 1.4.8. the name of the person if it appears with other personal information relating to the person or if the disclosure of the name itself would reveal information about the person.
- 1.5. **“Platforms”** – means our Website, related mobile and software applications, email addresses, telephone contact number, which are used to access and purchase our Products.

- 1.6. **“Product(s)”** means any item offered for sale through any one of our Platforms or through sale in a retail outlet, including the Mijovy Tape Cutter.
- 1.7. **“Proprietary Information”** – means information of either a confidential and/or proprietary nature in whatever form, and without limiting the generality of the term, shall include any of the following information disclosed or communicated by us to you in connection with or arising out of the purchase of our Products, (i) whether in writing, in electronic or verbal form, and (ii) whether disclosed intentionally or unintentionally, or as a result of us permitting you to visit any of our warehouses or retail outlets:
  - 1.7.1. technical, scientific, commercial, financial or market information, confidential information or trade secrets;
  - 1.7.2. data concerning business relationships, processes, services, personnel, customers, architecture, information, demonstrations, or machinery, all information or knowledge in respect of pricing, discounts, rebates, business methods and/or models, systems and concepts, supply chain designs and strategies, trading and merchandising methods and information, card transactions and models, mathematical modelling and predictive analytics, promotional and advertising plans and strategies, marketing, financial plans and models;
  - 1.7.3. all information relating to procurement requirements, procurement methodologies, procurement spend and supply base;
  - 1.7.4. inventions, ideas, plans, designs, drawings, functional and technical information and requirements and specifications, documents, papers, memoranda, correspondence, notebooks, reports, diagrams, discs, articles, samples, test results, prototypes, formulas, manufacturing techniques, know-how, statistics, processes, instruction manuals, research and development data, samples and demonstrations, user or consumer or client data and profiles, computer programs, drawings and any other information of a confidential nature, in whatever form it may be;
  - 1.7.5. information relating to our strategic objectives and planning for both its existing and future information technology needs;
  - 1.7.6. information contained in or constituting our hardware or software, including third party products, and associated material documentation;
  - 1.7.7. intellectual property that is proprietary to us or that is proprietary to a third party and in respect of which we have rights of use or possession;
  - 1.7.8. information concerning faults or defects in our systems, hardware and/or software or the incidence of such faults or defects;
  - 1.7.9. agreements to which we are a party;
  - 1.7.10. all other information in whatever form, whether or not subject to or protected by common law or statutory laws relating to copyright, patents, patent specifications and patent applications, trade marks, industrial designs, inventors’ certificates, whether registered or unregistered, or otherwise;
  - 1.7.11. the contractual, business and financial arrangements of us and others with whom we have business arrangements of whatever nature;
  - 1.7.12. information which by its nature or content is identifiable as confidential and/or proprietary to us and/or any third party; and
  - 1.7.13. Personal Information.
- 1.8. **“Registered Account Holder”** - means anyone registered on our Platforms and has provided us with a unique email address and password as well as other Personal Information with the purpose of ordering goods and services on our Platforms.
- 1.9. **“Standard Warranty”** – means we warrant that our Products have been manufactured to the highest standards and is fit for purpose. The standard quality warranty applies to all our Products for 6 months from the date of delivery or collection.

- 1.10. **“Terms and Conditions”** – means the terms and conditions as set out herein.
- 1.11. **“We”, “us” or “our”** -means Mijovy (Pty) Ltd.
- 1.12. **“Website”** – means [www.mijovy.com](http://www.mijovy.com).
- 1.13. **“You”, “your” or “user”** - means every person that accesses or uses our Platforms for the purpose of ordering any one of our Products or anyone purchasing our Products from a retail outlet, as the case may be.

## **2. IMPORTANT NOTICE**

- 2.1. Our Terms and Conditions apply to everyone who are defined as consumers for purposes of the Consumer Protection Act 68 of 2008 (“**CPA**”).
- 2.2. These Terms and Conditions contain clauses that appear in a similar text and style to this clause which you need to take note of because they:
- 2.2.1. may limit the risk or liability of Mijovy or a third party; and/or
  - 2.2.2. may create risk or liability for you; and/or
  - 2.2.3. may compel you to indemnify Mijovy or a third party; and/or
  - 2.2.4. serves as an acknowledgement, by you, of a fact.
- 2.3. Should any clause in these Terms and Conditions not be clear to you, it is your responsibility to ask Mijovy to explain it, before accepting these Terms and Conditions or by continuing to use any Platform or Product.
- 2.4. None of these clauses are intended to unlawfully restrict, limit or avoid any right of obligation, created for either you or Mijovy in terms of the CPA.
- 2.5. By using our Platforms or purchasing a Product through a retail outlet, you agree to accept all Terms and Conditions unconditionally. If you disagree with any clause in these Terms and Conditions, you should not use the Platforms nor our Products.

## **3. REGISTRATION AS AN ACCOUNT HOLDER THROUGH OUR PLATFORMS**

- 3.1. You have to be a Registered Account Holder to order any of our Products through our Website, Mobile application or related software.
- 3.2. If you order our Products via email or by telephone, we will create an Account for you.
- 3.3. You do not need to be a Registered Account Holder in order to purchase any of our Products in retail stores.
- 3.4. You may register an Account by providing a unique username and password and by providing certain personal information to Mijovy. You will need to use your unique user name and password to purchase any of our Products through our Platforms.
- 3.5. You must keep your username and password private and it must not be shared with anyone else.
- 3.6. If your username and password is used without your consent or fraudulently, you are liable for payment of any Products that were ordered, unless you cancel the order in terms of clause 4.6.

- 3.7. If your Account is accessed fraudulently, you must inform Mijovy immediately and take any and all reasonable steps to mitigate any possible loss or harm.
- 3.8. You may not use our Platforms unless you are at least 18 (eighteen) years of age or possess full legal capacity. If you are under 18 (eighteen) or do not possess legal capacity, you may not use our Platforms without proper supervision by a parent or guardian. If your parent or guardian consents to your use of our Platforms, he/she accepts these Terms and Conditions and agree to be legally bound thereto.

#### **4. SALES OF PRODUCTS**

- 4.1. Registered Account Holders can place orders for products on our Website, mobile applications and related software, via email or telephone, which Mijovy can accept or reject. Acceptance of an order depends on availability of stock, correct information in relation to a Product and receipt of payment by Mijovy.
- 4.2. When Mijovy accepts your order, the order will be delivered to you, or you may collect at any of our premises and/or retail outlets.
- 4.3. Should Mijovy reject your order, we will cancel it and refund you any amount already paid without undue delay.
- 4.4. Mijovy will confirm all orders via email communication.
- 4.5. Minimum orders for our Mijovy Tape Cutter are 30 units. If you require less units, you may obtain the desired number from any of our retail outlets.
- 4.6. You may cancel your order at any time prior to delivery, but must do so before you receive an order dispatch notice, a waybill number or tracking link. If you wish to cancel your order after receipt of delivery, you may do so in terms of our return policy in clause 7.
- 4.7. You may be charged a handling fee for any cancellation.
- 4.8. Placing a Product in your shopping cart without completing the order, does not constitute an order, and the Product(s) may be removed from your basket. If you wish to complete your order at a later stage, Mijovy will not be responsible if the Product you want is no longer available or if the price of the Product has changed.

#### **5. PAYMENT**

- 5.1. All online payments are secured through appropriate encryption technologies.
- 5.2. Payments for orders of Products made through our Platforms, may be made via debit card, credit card, Electronic Fund Transfer (EFT) or Instant EFT.
- 5.3. We do not accept cash on delivery and should you wish to purchase any of our Products via cash, you may do so by visiting any one of our retail outlets.
- 5.4. As soon as we have received your payment, we will send you communication to acknowledge receipt of your payment.

#### **6. DELIVERY**

- 6.1. You may collect your order from us, or you may elect to have it delivered to you via courier.
- 6.2. No order will be dispatched or collected before your payment reflects in our bank account.
- 6.3. No delivery charges are applicable if you collect your order from us.
- 6.4. Should you make use of a third party to collect your order from us, you must inform us via email. Upon collection, they must produce the order number and the proof of payment. You take full responsibility that your elected third party will deliver the order to you. We will only process returns as stipulated in clause 7.
- 6.5. Delivery to major metropolitan areas will be free of charge. Delivery charges in non-major metro's will be charged on orders according to the weight of the order. These delivery charges will be calculated automatically upon entering your delivery location on any of our Platforms.
- 6.6. It is your responsibility to ensure that your delivery address details reflect correctly on your Account at the time of placing your order. Mijovy does not accept any responsibility if you indicated your address incorrectly and your order was not delivered to you.
- 6.7. It remains your responsibility to ensure that your order is placed timeously considering the delivery time based on where you elect to accept delivery.
- 6.8. Mijovy makes no guarantees as to actual delivery times. We will send you a tracking link / waybill number for the courier to whom we hand over your order for delivery and it is your responsibility to follow up with the courier regarding delivery status.

## **7. RETURNS**

- 7.1. Should you not be satisfied with you order for any reason, you may return it to us to either replace/repair or you may request a refund, subject to this clause 7.
- 7.2. We will take back any unwanted Products provided that:
  - 7.2.1. it is not damaged and has not been used, with all the original labelling and/or stickers attached;
  - 7.2.2. it is not missing any parts or accessories;
  - 7.2.3. you request a return within 30 days of receipt of delivery.
- 7.3. You may request that we exchange a Product in your order. If the replacement Product is more expensive than your original purchase, you will be liable to pay us the additional amount. If it is less expensive, we will credit your Account.
- 7.4. If you receive an incorrect Product through our fault, we will collect it from you at no charge or alternatively we will refund you any courier costs you may incur. You may then elect to be refunded your payment or to have it exchanged for your original order.
- 7.5. If you find that the Product(s) is damaged or missing any parts upon delivery, you must notify us within 7 days of the delivery or collection. In accordance with our Standard Warranty, damaged or defective Products must be couriered to Mijovy at your own cost. We will inspect the returned Product, and if found to be damaged or defective, we will repair it. If repair is not possible, we will replace it. If neither repair nor replacement is possible, we will refund you.

7.6. If the damage or defect to the Product has not occurred as a result of any of the instances listed in clause 7.7, we will refund you the cost of the courier upon repair/replacement or refund of your Product.

7.7. The following will not be regarded as damaged or defective Products:

- 7.7.1. faults resulting from normal wear and tear;
- 7.7.2. damage arising from negligence, abuse or incorrect usage;
- 7.7.3. damage arising from failure to adequately care for the Product;
- 7.7.4. damage arising due to unauthorised alterations to the Product.

## **8. RESTRICTIONS ON THE USE AND DISCLOSURE OF THE PROPRIETARY INFORMATION**

8.1. You agree to protect the Proprietary Information of Mijovy by using the same standard of care used to safeguard your own information of a confidential or proprietary nature (but no less than a reasonable standard of care) and taking all reasonable steps to prevent any unauthorised disclosure of such Proprietary Information.

8.2. You agree not to use, reproduce, record, copy, adapt or distribute any of our Proprietary Information, without our prior written consent and to not make any notes, sketches, drawings, photographs or copies of any kind of any part of the Proprietary Information, except when reasonably necessary for the procurement of our Products and then only for personal use.

8.3. You acknowledge that any unauthorised or unlawful use or disclosure of our Proprietary Information may cause irreparable loss, harm and damage to Mijovy.

8.4. You acknowledge that monetary damages may not be a sufficient remedy for unauthorised or unlawful use or disclosure of the Proprietary Information and that we shall be entitled, without waiving any other rights or remedies, to such injunctive or equitable relief as may be deemed proper by a court of competent jurisdiction.

8.5. You undertake that neither you, nor any person associated with you, shall directly nor indirectly, whether for your own benefit, or for the benefit of anyone else, interfere with or infringe upon, circumvent or attempt to circumvent, avoid, by-pass or obviate the interests or statutory rights, or applications in respect thereof, of Mijovy; or the interest or relationship between Mijovy and clients, customers, producers, sellers, buyers, brokers, dealers, distributors, financial institutions, technology owners, developers or any other parties; or assist any third parties in doing so.

## **9. TITLE**

9.1. All Proprietary Information that is disclosed by us to the you (i) is proprietary to Mijovy; and (ii) does not confer any rights of whatsoever nature in such Proprietary Information to you.

9.2. You are not granted or assigned any rights in any of Mijovy's Proprietary Information or in any patent, industrial design, trade mark, copyright or any other Intellectual Property Right of any description, existing or future, and whether directly or indirectly.

## **10. IMPROVEMENTS AND INTELLECTUAL PROPERTY**



- 10.1. Any and all improvements, developments, adaptations and/or modifications to Mijovy's Proprietary Information shall be exclusively owned by and are hereby irrevocably assigned to us, for all territories internationally, in perpetuity.
- 10.2. If you develop a product or process which, in the reasonable opinion of Mijovy might have involved the use of any of our Proprietary Information, you shall, at our request, supply to us information reasonably necessary to establish that our Proprietary Information has not been used or disclosed.
- 10.3. You undertake that you shall not oppose, apply to revoke, or otherwise circumvent, attack or attempt to invalidate, any pending or registered IP rights of Mijovy resulting from improvements, developments, adaptations and/or modifications to our Proprietary Information, and you shall not assist any third party in doing so.

## **11. ACCURACY OF INFORMATION**

- 11.1. Whilst Mijovy endeavours to ensure that any information and content on the Platforms, marketing or advertisement material, is accurate and true, we cannot make legal representation and give a legal warranty that all information or content is accurate, non-infringing of third party rights, up to date and complete. We cannot accept liability for any loss or damage caused by inaccurate, out of date or incomplete information or content.
- 11.2. If you find any inaccurate, out of date or incomplete information or content on the Platforms, marketing or advertising material, or if you suspect there is an infringement of intellectual property rights or unlawful acts, please advise us immediately by contacting [support@mijovy.com](mailto:support@mijovy.com).
- 11.3. You should independently verify any information and content on the Platforms, marketing or advertisement material before relying on it. The information and content on, and software available through, the Platforms, marketing and advertisement materials are not intended to address any particular requirements; they do not constitute any form of advice or recommendation by us and are not intended to be relied upon when making (or refraining from making) any decision.

## **12. LIABILITY**

- 12.1. The material displayed on the Platforms, marketing or advertisement material is provided without any guarantees, conditions or warranties as to its accuracy. Subject to the above qualifications, to the extent permitted by law, Mijovy and third parties connected to Mijovy hereby expressly exclude all conditions, warranties and other terms which might otherwise be implied by legislation or the common law.
- 12.2. Mijovy has no liability for the inability of anyone to access the Platforms or any retail outlet or any information or material on it, and Mijovy does not warrant that the Platforms will operate without interruption, will always be available or will always remain in its current format or structure.
- 12.3. Mijovy is not responsible for, and will have no liability for, any error or corruption or breach of security resulting from the transmission of any information or material over any telecommunications network.
- 12.4. In no event shall our liability to you exceed any amounts paid to Mijovy at the time you make any claim against Mijovy.

12.5. Neither Mijovy, nor any one of our employees, will be held liable for any injury or death that may result from the inappropriate use of our Products.

12.6. Our Products are not toys and are not meant to be used by children.

### **13. CONFIDENTIALITY**

13.1. Each party shall keep the other party's Personal Information strictly confidential and not use it otherwise than for the purposes of these Terms and Conditions, and shall return it on demand and not retain copies of it.

13.2. Either party may disclose Personal or Proprietary Information to its legal and other advisors for the purposes of obtaining advice from them.

13.3. This clause shall continue notwithstanding termination of these Terms and Conditions.

### **14. TERMINATION**

14.1. Mijovy shall be entitled to terminate these Terms and Conditions and cease to provide you with any Products with immediate effect in the event that you:

14.1.1. fail to pay any amount when due;

14.1.2. act in an aggressive, bullying, offensive, threatening or harassing manner towards any employee of Mijovy or any other client or customer of Mijovy;

14.1.3. steal or act in fraudulent or deceitful manner towards Mijovy or our employees;

14.1.4. intentionally or recklessly damage Mijovy's property or the property of our employees or other clients or customers of Mijovy;

14.1.5. is intoxicated through alcohol or illegal drugs while on our premises;

14.1.6. commits any criminal offence committed on Mijovy's premises or where the victim is our employee or another client or customer;

14.1.7. is in breach of these Terms and Conditions.

14.2. On termination clauses 8, 9, 10, 12, and 13 shall continue notwithstanding such termination.

### **15. GOVERNING LAW**

These Terms and Conditions shall be governed by and construed and interpreted in accordance with the laws of South Africa and the parties agree and submit themselves to the jurisdiction of the South African courts.

### **16. WHOLE AGREEMENT**

These Terms and Conditions constitutes the whole agreement between the parties as the subject matter hereof and no agreements, representations or warranties between the parties other than those set out herein are binding on the parties.

### **17. VARIATION**

No addition to or variation, consensual cancellation or novation of these Terms and Conditions (including this clause 17) shall be of any force or effect unless reduced to writing and signed by both parties or by their duly authorised representatives and no waiver of any right of either party arising from these Terms and Conditions or its breach or termination shall be of any force or effect unless reduced to writing and signed by the party waiving its right.

### **18. RELAXATION**



No latitude, extension of time or other indulgence which may be given or allowed by either party to the other in respect of the performance of any obligation hereunder or the enforcement of any right arising from these Terms and Conditions and no single or partial exercise of any right by either party shall under any circumstances be construed to be an implied consent by such party or operate as a waiver or a novation of, or otherwise affect any of that party's rights in terms of or arising from these Terms and Conditions or stop such party from enforcing, at any time without notice, strict and punctual compliance with each and every provision or term hereof.

**19. SEVERABILITY**

In the event any term or provision of these Terms and Conditions is held to be invalid, it shall not affect the validity or enforceability of the remainder of these Terms and Conditions. In the event any term or provision is held to be too restrictive, then to the extent possible, said restriction shall automatically be deemed, retroactive to the effective date hereof, to be no more restrictive than found to be reasonable to the court.

**20. CHANGES TO THESE TERMS AND CONDITIONS**

20.1. Mijovy is entitled, in its sole discretion, to change any one of these Terms and Conditions at any time, without notice. It is your responsibility to make sure that you understand and is satisfied with any changes. If you do not agree with any clause in these Terms and Conditions, you should not use our Platforms or Products.

20.2. If you continue to use our Platforms or Products, you will be deemed to have accepted any changes.