



## The Ergolab Customer Terms and Conditions

**Items in these Terms and Conditions that are of importance or that carry a level of risk for you are in bold. Please pay special attention to these clauses and make sure you understand them. If you don't understand something, please get us to explain it to you.**

### 1 Definitions

- 1.1 **"Acceptance Date"** means the date on which you accepted the Agreement, be that in writing or by way of electronic medium, for example by clicking "I agree" on a web page or via your mobile phone;
- 1.2 **"Agreement"** means the agreement of sale or the Rental Contract concluded between you and Ergolab which agreement will be exclusively governed by these Terms, the Website Terms and Conditions, the Review Posting Guidelines and the Privacy Policy;
- 1.3 **"Business Day"** means Monday to Friday, but excludes Saturdays and a day which is an official public holiday in the Republic of South Africa;
- 1.4 **"Business Hours"** means the hours between 08h30 and 17h00 on a Business Day;
- 1.5 **"CPA"** means the Consumer Protection Act, 68 of 2008, as amended from time to time;
- 1.6 **"Customer"** or **"you"** means a user of any of our products or services;
- 1.7 **"ECT Act"** means the Electronic Communications and Transactions Act, 2002, as amended from time to time;
- 1.8 **"Ergolab", "we", "us" and "our"** means The Ergolab (Proprietary) Limited, registration number 2016/325686/07;
- 1.9 **"Ergolab Marks"** means any trademarks, logos, brand names, trade names domain names or other names or marks of Ergolab whether registered or not;
- 1.10 **"Intellectual Property Rights"** means the copyright in any work in terms of the Copyright Act, No. 98 of 1978, and includes without limitation the right to reproduce that work, the rights in respect of a trade mark conferred by the Trade Marks Act, No. 194 of 1993, the rights in respect of a design conferred by the Designs Act, No. 195 of 1993, and the rights in respect of a patent conferred by the Patents Act, No. 57 of 1978 including any applications for the foregoing and any names, licenses, know how, trade secrets and data associated with the foregoing;
- 1.11 **"Juristic Person"** means a company or close corporation and includes a body corporate, partnership, association or trust;
- 1.12 **"Legal Notices Website"** means [www.ergolab.co.za/privacy-notice](http://www.ergolab.co.za/privacy-notice); [www.ergolab.co.za/conditions-of-use](http://www.ergolab.co.za/conditions-of-use)

The Ergolab (Pty) Ltd, Co. Reg. 2016/325686/07, Vat No. 4860280215, 5 Esso Road, Montague Gardens,  
Cape Town, 7441

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- 1.13 “**Products**” means ergonomic furniture products, which could be sold or rented to the Customer by us;
- 1.14 “**Purchase Date**” means the date that a successful sale is concluded by completing the checkout process for a purchase of Products, and including successful payment in full;
- 1.15 “**Rental Contract**” means the agreement to rent Products (whether on a straight rental or a Rent-to-Own basis) concluded on our website or in physical form on our rental contract or rent-to-own contract template;
- 1.16 “**Rental Date**” means the date that a successful Rental Contract is concluded by completing the checkout process for a rental of Products, or the parties signing the physical Rental Contract, and including successful payment in full of the deposit required for such rental;
- 1.17 “**Rent-to-Own**” means where Products are rented to a customer with the intention that the customer will, subject to the terms and conditions set out herein and in the Rental Contract, own such Products;
- 1.18 “**Service**” means the sale or rental of Products;
- 1.19 “**Terms**” means these terms and conditions;
- 1.20 “**Uncontrollable Event**” means (including without limitation) any fire, flood, earthquake, elements of nature or acts of God, riots, civil disorders, rebellions or revolutions in any country or any other cause beyond the reasonable control of Ergolab including the termination or suspension of a service or product provided by a third party, that may result in a delay or a failure to provide any product or service;
- 1.21 “**Used Goods**” means products that have been previously supplied to and used by a consumer;
- 1.22 “**VAT**” means Value Added Tax as provided for in the Value Added Tax Act, 1991; and
- 1.23 “**Website**” means [www.ergolab.co.za](http://www.ergolab.co.za).

## **2 Commencement, Duration, Termination and Cooling-off**

- 2.1 The Agreement will commence on the Acceptance Date and endure indefinitely until it is cancelled as provided for in the Agreement.
- 2.2 **This Agreement incorporates by reference the Website Terms and Conditions, Review Posting Guidelines and Privacy Policy which have been made available to you on this website and which you undertake to read and understand. If you do not understand anything, please ask us to explain it to you.**
- 2.3 Ergolab may terminate this Agreement immediately for material breach of this Agreement.
- 2.4 Notwithstanding the termination of the Agreement, in the event that you continue to use the Products or services despite the termination of the Agreement, you will remain liable for and promptly pay on demand all amounts that would have been due to Ergolab as a result of the use of or access to the Products or service and this Agreement shall be deemed to continue to apply until such time as all amounts due to Ergolab have been paid in full, and all obligations due to Ergolab in terms of this Agreement have been fulfilled. Notwithstanding, we retain the right to terminate the Agreement at any time.

- 2.5 If the Agreement results from any direct approach to you by Ergolab or is an electronic transaction as contemplated in the ECT Act, you will be entitled to cancel the Agreement on written notice to Ergolab without reason or penalty within 5 (five) Business Days of –
- 2.5.1 in the case of services only being provided in terms of the Agreement - the Acceptance Date; and
- 2.5.2 in the case where goods are provided and constitute the subject of the Agreement, whether in conjunction with services or on its own – the date of delivery of such goods.
- 2.6 For purposes of clause 2.5.2, goods include any literature, music, photograph, motion picture, game, information, data software, code or other intangible product or any license to use such intangible product.
- 2.7 A contract for sale of Products will only come into being on the Purchase Date. A contract for rental of Products (whether on a straight rental or a Rent-to-Own basis) will only come into being on the Rental Date.
- 2.8 Should you wish to cancel an order please note that for all orders cancelled within 5 (five) Business Days prior to the Purchase Date or the Rental Date (whichever is applicable), a cancellation fee may be charged of:
- 2.8.1 25% (twenty five percent) of the total order value (for the sale of Products); or
- 2.8.2 an amount equal to the first months' rental under such cancelled order.

### **3 Conditions of access**

- 3.1 Ergolab will make the Service available to you on the Acceptance Date.
- 3.2 You must be at least 18 (eighteen) years of age to access the Services.
- 3.3 Ergolab will, where relevant, issue a user name and password to you prior to the Acceptance Date in order to enable you to gain access to and/or use a service. In such instance, you will not be able to access and/or use a service without a user name and password.
- 3.4 You agree that:
- 3.4.1 you will use your user name and password for your own personal use only;
- 3.4.2 you will not disclose your user name and password to any other person for any reason whatsoever and that you will maintain the confidentiality thereof;
- 3.4.3 in the event that your password is compromised, you will immediately notify Ergolab and change your password;
- 3.4.4 **you, as the holder of the user name and password, acknowledge you are solely responsible for all payments in respect of a service charged to your Ergolab account, irrespective of whether the service has been utilized or is being utilized by you or not and accordingly the entire amount outstanding on your Ergolab account will be deemed to have arisen from (or relate to) your access to and/or use of a service;**

- 3.4.5 you agree to cause all persons who use any products or services under your account or with your authorization to comply with the Agreement. All acts or omissions of all persons who use services under your account or with your authorization will be treated for all purposes as your acts or omissions;
- 3.4.6 Ergolab also offers a password reminder service. We will send your password to your registered email address or cell phone number should you have forgotten your password. Subscription to this service is voluntary. Password reminders will only be sent to your registered details and should such details change it is your responsibility to notify us.
- 3.4.7 you will not, at any time, permit and/or initiate a simultaneous network log-in; and
- 3.4.8 you will not attempt to circumvent Ergolab' user authentication processes or engage in attempts to access Ergolab' network where not expressly authorised to do so.

#### 4 **Service Delivery and Availability**

- 4.1 Ergolab will use reasonable endeavors to make its services available to you, and to maintain the availability thereof for use by you. However, we provide the services "as is" and "as available" and do not warrant or guarantee that the services will at all times be free of errors or interruptions, be always available, fit for any purpose, not infringe any third party rights, be secure and reliable, or will conform to your delivery timeline requirements subject always to the provisions of the CPA where applicable.
- 4.2 Ergolab will use its best endeavors to notify you in advance of any maintenance and repairs which may result in the unavailability of a service, but cannot always guarantee this.

#### 5 **Product Delivery, Ownership & Risk**

##### 5.1 **Delivery:**

- 5.1.1 Products will be delivered by our courier services or own vehicles to street addresses only at the time and date agreed with you. Our courier or own vehicle will attempt to deliver 3 (three) times, to the street address specified by you in the checkout process, whereafter we will cancel the order and refund any monies due to you.
- 5.1.2 The cost of delivery will be specified during the checkout process for the sale of Products, or in the Rental Contract.

##### 5.2 **Ownership & Risk:**

- 5.2.1 Under a contract for the **sale of Products**, ownership in the Products will pass to the Customer on the Purchase Date, and risk will pass to the Customer on delivery.
- 5.2.2 Under the **straight Rental Contract for a straight rental of Products**, ownership in the Products will remain at all times with Ergolab, and risk will pass to the Customer on delivery.
- 5.2.3 Under the **Rent-to-Own Rental Contract**, ownership in the Products will remain at all times with Ergolab until the Total Rental (as recorded in the Rent-to-Own Rental Contract) for such Products and all other

amounts you owe us under the Agreement have been paid in full, and risk will pass to the Customer on delivery.

## **6 Incorrect or Damaged Delivery of Products**

- 6.1 If the container that the Products are delivered in is damaged, do not accept the goods.
- 6.2 If the incorrect quantity of Products is delivered, please contact us so that we may correct the error.

## **7 Communication and Dispute Resolution**

- 7.1 You agree that Ergolab may from time to time send you communications regarding (without being limited to) special offers or discounts which Ergolab may negotiate for and offer to its Customers, operational changes that may affect the services and/or new services or products launched. All communications will abide by our Privacy Policy and applicable law. You will always be entitled to notify us in writing that you do not wish to receive or continue to receive such communications and if you are a consumer as contemplated in the CPA, to pre-emptively block the receipt of such communications.
- 7.2 Any dispute between the parties may be referred to arbitration and finally resolved in accordance with the rules of the Arbitration Foundation of Southern Africa. Such arbitration shall be held either in Cape Town or Johannesburg, and conducted in the English language before one arbitrator appointed in accordance with the said rules. Any award will be final and not subject to appeal. This agreement to arbitrate shall be enforceable in, and judgement upon any award may be entered in any court of any country having appropriate jurisdiction. A dispute shall be deemed to have arisen when either party notifies the other party in writing to that effect.
- 7.3 The arbitrator shall have the power to give default judgement if any party fails to make submissions on due date and/or fails to appear at the arbitration.
- 7.4 The provisions set out above shall not prevent either party from approaching any court of competent jurisdiction to obtain interim or other relief in cases of urgency.

## **8 Payment**

- 8.1 You agree to pay all amounts due under this Agreement in consideration for the Products and the Service offerings.
- 8.2 Billing will commence on the Purchase Date or Rental Date, as applicable to you. A valid tax invoice will be emailed to your registered email address on the Purchase Date or, if you are renting Products, on the Rental Date and prior to the date for rental payments for each month of the rental period. All prices are exclusive of VAT.
- 8.3 For the **sale of Products** (the terms for Rental Contracts being in the annexure hereto):
  - 8.3.1 a 70% (seventy percent) deposit is required to be paid on order confirmation and receipt of an invoice with the remaining 30% (thirty percent) payable 7 (seven) days prior to delivery, subject to clause 8.3.2;
  - 8.3.2 for all orders in respect of existing warehouse stock, an invoice for 100% (one hundred percent) will be issued upfront and must be paid on order confirmation.

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- 8.4 The processing of orders may be delayed if the deposit is not received with the order or if your account is in arrears.
- 8.5 For the sale of Products (the terms for Rental Contracts being in the annexurs hereto), payments can be made as follows:
- 8.5.1 Credit Card Transactions are acquired by Paygenius, a registered systems operator and payment gateway in South Africa. Card Holders may go to [www.paygenius.co.za](http://www.paygenius.co.za) to view Paygenius' security policy. Please note that you will be required to accept the terms and conditions for the use of the Paygenius service to place any orders with us. If authorisation is not obtained from your acquiring bank, the order is cancelled. You warrant that you are authorised to use the credit card for payment of your order and that there are sufficient funds in this credit card account to cover the costs of any transactions you complete on Ergolab.
- 8.6 To the extent that we incur any additional expenditure relating to the tracing and/or collection of unpaid amounts, those costs shall be for your account to the extent permitted by law.

## 9 Privacy

- 9.1 Ergolab will deal with your personal information in accordance with the provisions of our Privacy Policy which is available on our [www.ergolab.co.za/privacy-notice](http://www.ergolab.co.za/privacy-notice) and in compliance with all relevant laws.

## 10 Intellectual Property Rights

- 10.1 You agree to comply with all laws applicable to any Intellectual Property Rights in respect of any data, files and/or information accessed, retrieved or stored by you through your use of any of our services and/products.
- 10.2 You are prohibited from using any Ergolab Marks without the prior written approval of Ergolab.
- 10.3 Ergolab (or its Third Party licensors) will wholly and exclusively retain all Intellectual Property Rights related to the provision of any of the services or products in terms of these terms and conditions.
- 10.4 Ergolab will deal with any content submitted by you in terms of the Review Guidelines.

## 11 Warranty and Returns

- 11.1 Please note that this will not apply to any Products that are damaged due to misuse or that have been tampered with contrary to any manufacturer's instructions or other void conditions.
- 11.2 **For sold Products only:** If you are not satisfied with your Products, you can return them for a full refund within 30 (thirty) days of delivery thereof provided they are not damaged due to misuse or have been tampered with contrary to any manufacturer's instructions or other void conditions.
- 11.3 **For sold & rented Products:** In the first six months after the delivery date, should the Products not be suitable for the purpose for which they were generally intended or should something go wrong with the Products purchased, the Customer will have the rights and remedies set out in the CPA available to them where the CPA applies to you and/or the Products or Services in question, subject to any limitations and restrictions as allowed in favour of Ergolab under the CPA. Please note, this is not a return because you no longer want the goods.

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- 11.4 Unless it is determined that the warranty is void, any Products returned will be at Ergolab's risk and expense. Please contact our call centre and ask about our process for return of faulty Products and our courier company will then contact you to arrange collection of the faulty Products.
- 11.5 Faulty Products will be repaired or replaced at your option.
- 11.6 THE FOLLOWING WARRANTY IS IN LIEU OF ALL OTHER WARRANTIES EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO, THE IMPLIED WARRANTY OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. WARRANTY DOES NOT COVER "CUSTOMER'S OWN MATERIAL" (I.E. FABRIC SPECIFIED BY THE BUYER.)
- 11.7 Manufacturer's warranty on all seating products:
- 11.7.1 5 Years: High wear parts such as castors, glides and arm caps;
- 11.7.2 10 years: Fabrics/cushions and pneumatic cylinders; and
- 11.7.3 Lifetime: All other parts.
- 11.8 This WARRANTY is applicable to the initial purchaser only and is non-transferable.
- 11.9 This warranty is based upon a single 8-hour shift usage with a maximum user weight capacity of 300lbs only and shall be pro-rated for double-shift or triple-shift usage.
- 11.10 Any Used Goods will be clearly marketed and marked as such. All Used Goods will carry the remainder of any manufacturer's warranty. If the Used Goods have been repaired, the warranty on such repair will be 3 (three) months.

## **12 Breach**

- 12.1 Subject to any other provisions set out in these Terms, should you be in breach of any provision of this Agreement, then Ergolab shall be entitled, without prejudice to any other rights that it may have and to the extent required or permitted, as the case may be, by law, to forthwith:
- 12.1.1 afford you a reasonable opportunity to remedy the breach, taking into account the nature of the breach in question; or
- 12.1.2 suspend your access to the Service; or
- 12.1.3 cancel all agreements concluded between us.

## **13 Indemnity**

- 13.1 **You hereby unconditionally and irrevocably indemnify Ergolab and agree to indemnify and hold Ergolab harmless against all loss, damages, claims, liability and/or costs, of whatsoever nature, howsoever and whensoever arising, suffered or incurred by Ergolab as a result of any claim instituted against Ergolab by a third party (other than you) as a result of (without limitation):**

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- 13.1.1 your use of our Services other than as allowed or prescribed in the Agreement;
- 13.1.2 any other cause whatsoever relating to the Agreement or the provision of Services to you where you have acted wrongfully or failed to act when you had a duty to so act.

**14 No representations, warranties or guarantees and Limitation of liability**

- 14.1 Save to the extent otherwise provided for in this Agreement or where you are entitled to rely on or receive, by operation of law, any representations, warranties or guarantees, we do not make or provide any express or implied representations, warranties or guarantees regarding the availability, accuracy, reliability, timeliness, quality or security of any product or service.
- 14.2 Without limiting the generality of the provisions of clause 14.2, Ergolab shall not be liable for and you will have no claim of whatsoever nature against Ergolab as a result of :
  - 14.2.1 the loss of or access to any usernames and passwords which you are required to safeguard and not allow unauthorized access on the understanding that we will be entitled to assume that you are the person so using or gaining access to any service or account where your username and password is used;
  - 14.2.2 any unavailability of, or interruption in the Service due to an Uncontrolled Event;
  - 14.2.3 any damage, loss, cost or claim which you may suffer or incur arising from any suspension or termination of the Service/s for any reason contemplated in the Agreement.
- 14.3 In addition to and without prejudice to any other limitations of liability provided for in the Agreement and to the fullest extent permitted by applicable law, Ergolab shall not be liable to you for any direct damages howsoever arising and neither party shall be liable to the other for any special, indirect, incidental, consequential or punitive damages arising out of or relating to this Agreement, whether resulting from negligence, breach or any other cause. To the extent that a competent court or tribunal or other competent dispute resolution body or authority finally determines, notwithstanding the exclusion contained in this clause, that Ergolab is liable to you for any damages, Ergolab' liability to you for any damages howsoever arising shall be limited to the amount of R5000 (five thousand rand).

**15 Cession and Delegation**

You may not sell, cede, assign, delegate or in any other way alienate or dispose of any or all of your rights and obligations under and in terms of this Agreement without the prior written approval of Ergolab. Ergolab shall be entitled to sell, cede, assign, delegate, alienate, dispose or transfer any or all of its rights and obligations under and in terms of this Agreement to any of its affiliates or to any third party without your consent and without notice to you provided that you are not unduly prejudiced as a result. "Affiliates" for this purpose includes Ergolab' holding company, the holding company(ies) of Ergolab' holding company (collectively "its holding companies"), its subsidiaries, subsidiaries of its holding companies and any other companies which are directly or indirectly controlled by Ergolab or are under common control with Ergolab.

**16 Jurisdiction**

You hereby consent to the jurisdiction of the Magistrate's Court in the Republic of South Africa in respect of any proceedings that may be initiated by Ergolab arising out of this Agreement, provided that Ergolab shall be  
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entitled, in its reasonable discretion, to institute such proceedings in the High Court of South Africa and, in such event, you consent to the jurisdiction of such court. The jurisdiction of the Small Claims Court is specifically excluded, as the parties agreed to follow the arbitration process set out in clause 7 above.

## **17 Amendment of this Agreement**

Ergolab reserves the right to amend this Agreement from time to time. Any new version of the Agreement will be displayed on our Website together with the date on which it will become effective, which will never be less than 30 (thirty) days after the date on which it is first published. It is your obligation to visit our website on a regular basis in order to determine whether any amendments have been made.

## **18 General**

- 18.1 The parties acknowledge and agree that this Agreement constitutes the whole of the agreement between them and that no other agreements, guarantees, undertakings or representations, either verbal or in writing, relating to the subject matter of this Agreement not incorporated in this Agreement shall be binding on the parties. No variation or addition of this Agreement by you will be binding unless recorded in writing and signed by both parties.
- 18.2 Ergolab is in terms of section 43 of the ECT Act required to make its contact details, its *domicilia citandi et executandi* and certain other information available to its Customers who enter into electronic transactions with Ergolab. This information is available on the website.
- 18.3 You agree that any notices we send to you in terms of any agreement concluded between us may be sent via e-mail unless otherwise prescribed by law.
- 18.4 No indulgence, leniency or extension of time which Ergolab may grant or show to you shall in any way prejudice Ergolab or preclude Ergolab from exercising any of its rights in the future.
- 18.5 **You warrant that as at the date of signature all the details furnished by you to Ergolab are true and correct and that you will notify Ergolab in the event of any change to such details.**
- 18.6 All our terms and conditions can be accessed, stored, and reproduced electronically by you.
- 18.7 The physical address where Ergolab will receive legal service of documents/ *domicilium citandi et executandi* is the following:

**Ergolab  
9 Raciti Park  
5 Esso Road  
Montague Gardens  
Western Cape  
7441**

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**STRAIGHT RENTAL CONTRACTS OR RENT-TO-OWN CONTRACTS:  
ADDITIONAL CLAUSES APPLICABLE**

If you are:

- 1) RENTING Products on a STRAIGHT RENTAL BASIS (where ownership will not transfer to you); or
  - 2) RENTING Products on a RENT-TO- OWN basis (where ownership is intended to transfer to you),
- this Annexure A will apply to your Rental Contract.

If there is any conflict between this Annexure A and any terms recorded in the main body of these Terms, Annexure A will apply to the extent of the conflict.

**1. Duration and Termination**

**1.1. Fixed Term Agreements**

- 1.1.1. **where the Customer is a natural person**, you may cancel the Agreement either on the expiry of the fixed period ("**Initial Fixed Period**") recorded in the Agreement (such Initial Fixed Period calculated from the date on which the Products are delivered to you), or on at least 20 Business Days written notice to Ergolab at any time prior to the expiry of the Initial Fixed Period, subject to paragraph 1.1.4 below. If the Agreement is not cancelled by you or by us prior to or on the expiry of the Initial Fixed Period, it will automatically continue and constitute a month to month agreement terminable on at least 1 (one) calendar month's notice to us, which termination will take effect on the first day of the month immediately following the end of the applicable notice period. We will notify you not more than 80 (eighty) and not less than 40 (forty) Business Days prior to the expiry of the Initial Fixed Period of the impending expiry date, any material changes to the Agreement that will apply to such automatic renewal, and that you retain your right to cancel as aforesaid.
- 1.1.2. **where the Customer is a Juristic Person**, you may not cancel the agreement during the initial fixed term of the Agreement (such initial fixed period calculated from the date on which the Products are delivered to you) save for a material unremedied breach committed by us. At the expiry of the initial fixed period, the Agreement will automatically renew and will continue on a month to month basis ("**Renewal Period**") on the revised terms including revised pricing applicable for such Renewal Period which we will notify you of prior to the expiry of the initial fixed period. You may terminate the Agreement during the Renewal Period by giving us 30 (thirty) days written notice if the term in the Rental Contract is 60 (sixty) days or less, and 60 (sixty) days written notice if the term in the Rental Contract is more than 60 (sixty) days. The notice will take effect on the first day immediately following the end of such notice period.
- 1.1.3. Ergolab may cancel the Agreement –
  - 1.1.3.1. in the case of a **fixed term agreement concluded with natural persons** – 20 (twenty) Business Days after giving you written notice to remedy a material breach of the Agreement and you have failed to remedy that breach within such time; and
  - 1.1.3.2. in the case of any other fixed term agreement or any month to month agreement, immediately for material breach of this Agreement or of any other agreement between us and you.
- 1.1.4. In the case of a fixed term agreement contemplated in paragraph 1.1.1, in the event that you cancel the Agreement prior to the expiry of the Initial Fixed Term. You will remain liable for all amounts owing up to the date of cancellation and in addition we will be entitled to impose a **reasonable cancellation penalty** in contemplation of the Agreement enduring for its intended fixed term.

- 1.2. Save as specifically provided for in paragraph 1.1 above, termination of the Agreement shall be governed by and given effect to as contemplated in this Agreement. In particular, **month to month rental agreements (other than fixed term agreements contemplated in paragraph 1.1.1 and paragraph 1.1.2) may be terminated** by either us or you on 1 (one) calendar month's notice, which termination will take effect on the first day of the month immediately following the end of the applicable notice period.

## **2. Deposit, Payment and Debit Orders**

### **2.1. Deposit:**

- 2.1.1. you will pay the deposit recorded in the Rental Contract within 2 days of the Rental Contract being signed by both parties, without the necessity of us having to send you an invoice;
- 2.1.2. you are not allowed to off-set monthly rental or any other amount owing in terms of this Agreement against the deposit;
- 2.1.3. we shall be entitled to use the deposit in order to cover any obligation which you have not met in terms of this Agreement.
- 2.1.4. if we use the deposit in this manner, you shall reinstate the deposit on demand.

- 2.2. **Rentals:** You will pay all rentals (plus accrued interest thereon, as recorded in the Rent-to-Own Rental Contract) each month in arrears, without the necessity of us having to send you a monthly statement or invoice (which we will nonetheless deliver to you). Your first rental plus interest payment may be for part of a month and you will be charged for the number of days left in the month in which you rent Products. If you do not pay by debit order, you will pay all amounts owing to Ergolab, without deduction or set off, by electronic transfer into the following bank account:

**Accountholder's name:** The Ergolab (Pty) Ltd

**Bank's Name:** FNB

**Branch name:** Fourways View    **Branch No.** 251655    **Account No.** 62705234524

**Reference:** please use your surname (for natural person customers) or entity name (for juristic person customers)

- 2.3. **Debit Orders:** If you complete the debit order form on the Rental Contract, to the fullest extent permitted by law, all amounts due and payable in terms hereof shall be paid free of exchange and without deduction or setoff, by way of a direct debit order in favour of Ergolab (drawn against a current banking account nominated by you), or in such other manner as we may from time to time determine. You agree that:
- 2.3.1. we will be entitled and authorized to draw all amounts payable in terms of the Agreement from the account specified by you (or any other bank or branch to which it may be transferred);
- 2.3.2. the debit order will commence on the Rental Date and will continue and not be revoked until termination of this Agreement or until all amounts due and owing to us have been fully and finally discharged;
- 2.3.3. you will sign all such forms and do all such things as may be necessary to give effect to the debit order as contemplated in this paragraph 2.3.
- 2.4. Should you fail to pay any amount on the due date for payment then we may, without prejudice to any of our other rights and remedies, subject to paragraph 1 of this Annexure and clause 2 of the main body of these Terms:
- 2.4.1. take all such further steps as may be necessary to recover the outstanding amount from you, including without limitation the use of debt collection mechanisms;
- 2.4.2. take possession of the Products and remove them from your premises without notice to you until such time as the outstanding amount has been paid in full; or

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- 2.4.3. terminate this Agreement with immediate effect.
- 2.5. A certificate signed by any of our managers or other authorised persons, certifying the amount due by you will on the face of it, be proof of the amount of your indebtedness. It shall not be necessary to prove the appointment of the person signing such certificate.
- 2.6. For month to month rental terms, you agree that the prevailing rental for each Product will increase once per year on the anniversary of the Rental Date by the Consumer Price Index, cumulatively.

### **3. Ownership and Possession of the Products**

- 3.1. Customer acknowledges and agrees that, under a straight Rental Contract and until ownership of the products passes to the Customer under a Rent-to-Own Rental Contract:
  - 3.1.1. the Products shall at all times remain the property of Ergolab;
  - 3.1.2. the Products shall at all times be regarded as movable property and shall not become part of any premises where they are kept.
- 3.2. In the event that the Agreement is terminated:
  - 3.2.1. under a straight Rental Contract; or
  - 3.2.2. under a Rent-to-Own Rental Contract, the Customer shall be obliged to settle the full outstanding amount, failing which,

Ergolab shall have the right to enter the premises where the Products are kept in order to remove the Products and take possession of them. Customer shall provide Ergolab with the necessary co-operation and assistance to arrange for the removal of the Products from Customer's premises

- 3.3. The Customer shall not allow any third party to take possession of the Products unless duly authorised in writing in advance by us. Should any third party take possession of the Products without the said authorisation, the full replacement value thereof shall immediately be due and payable by the Customer to us. Notwithstanding this paragraph, the Products shall at all times remain the property of Ergolab.
- 3.4. Where appropriate, third party vendor equipment supplied by us may be covered by the vendor's standard warranties and guarantees. Customer shall not engage in any action which contravenes or voids the vendor's terms of warranty or guarantee. In **the event that Customer engages in any action which contravenes or voids the vendor's warranty, Customer shall bear the costs of any repairs, replacements or extended warranties and guarantees.**
- 3.5. **No Landlord's Hypothec or Lien:** the Customer acknowledges and agrees that if the site at which the Products are to be kept is rented, Customer shall:
  - 3.5.1. advise us in writing of the name and address of the landlord as well as any changes thereto;
  - 3.5.2. inform the landlord that the Products belong to Ergolab and can therefore not be subject to a lien or hypothec, it being agreed that Ergolab may notify the landlord of this fact should Customer fail to do so; and
  - 3.5.3. not move the Products from such premises without Ergolab's prior written consent.

### **4. Risk**

- 4.1. **Risk of loss of, damage to, or destruction of the Products passes to the Customer on delivery of the Products to you. For the avoidance of any doubt, such risk includes but is not limited to the following instances:**
  - 4.1.1. where the Customer is in arrears with any rental (and/or interest) payment due;
  - 4.1.2. where the Products were stolen without forced entry to the delivery address;
  - 4.1.3. where the Products were stolen and the Customer cannot prove that the theft was reported to the South African Police Service within forty-eight hours;

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- 4.1.4. where the Customer was negligent in securing the Products or the delivery address;
- 4.1.5. where the Products were damaged intentionally or as a result of gross negligence on the part of the Customer;
- 4.1.6. in the event that a remote control device to access the premises is lost or damaged;
- 4.1.7. where the Products are:-
  - 4.1.7.1. lost or stolen from premises other than the delivery address; or
  - 4.1.7.2. damaged by being cut, scratched, dropped, thrown or making contact with a hard object or being immersed in water or other liquids.
- 4.2. The Customer shall bear all risk of loss, damage and/or destruction of the Products while housed at Customer's premises for an amount equal to the full replacement value thereof. Customer shall make its own arrangements regarding the insurance of the Products.

## 5. **Use**

- 5.1. The Customer undertakes to use the Products solely for internal purposes and only for purposes for which the Products are commonly intended.
- 5.2. The Customer shall be obliged to:
  - 5.2.1. use only those cleaning materials and substances specifically identified as safe for use in the specifications, instructions and directions laid out by the manufacturer of such Products;
  - 5.2.2. use any and all Products strictly in accordance with the specifications, instructions and directions laid out by the manufacturer of such Products.
- 5.3. Customer may not, directly or indirectly, in whole or in part, without our prior written consent:
  - 5.3.1. sell, donate, loan, lease or otherwise alienate the Products;
  - 5.3.2. cede or transfer any rights to the Products;
  - 5.3.3. deny our agents or employees reasonable access to the Products;
  - 5.3.4. tamper with the Products or allow anyone else to tamper with, repair, alter, modify, adjust or service the Products; or
  - 5.3.5. move the Products to any other location without our express written permission.

- 6. **Maintenance by Us:** For as long as the Customer complies strictly with these Terms, we will maintain the Products in good working order and repair, or if necessary, substitute the Products with equivalent Products.

- 7. **Right to inspect:** Customer consents and shall ensure that we may at any time enter the premises where the Products are kept to inspect them, provided that we supply Customer with reasonable prior notification of such.

## 8. **National Credit Act**

- 8.1. Although a straight Rental Contract (and therefore this Agreement) is not a credit agreement as contemplated in the National Credit Act, 34 of 2005, as amended ("**NCA**"), and Ergolab will not conclude Rent-to-Own Rental Contracts that fall within the NCA, your application for a service or Products may be subject to a credit referencing or risk assessment process. This means that Ergolab may utilize the information provided by you including your personal information and request and receive information about you and your credit record

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from registered credit bureaus in order to determine whether you will be in a position to meet your obligations under the intended Agreement. Ergolab will be entitled to decline to activate a product or service that you apply for if Ergolab reasonably determines that you may not be able to meet your commitments under the Agreement.

8.2. Ergolab is entitled to perform these assessments each time you apply for a Service or Product.