

FRENCH MARKET WEBSITE TERMS OF SERVICE

These Terms of Service ("Terms") are effective as of the Effective Date as set out in item 2 of the Table.

1	Company:	Himely Travel Services cc T/A The French Market
	Registration No:	2010/000373/23
	Physical address:	First Floor Gardens Shopping Centre, Mill Street, Cape Town, 8001, South Africa
	Email address:	admin@frenchmarket.co.za
2	Effective Date:	1 Feb 2024
3	Website:	https://frenchmarket.co.za
4	User:	Refers to any visitor to the website at the above URL who makes a purchase or registers a user account.
5	Services:	All orders placed online with The French Market constitute the User's offer to purchase the products subject to these terms and conditions.
6	Privacy Policy:	See https://frenchmarket.co.za/legal/privacypolicy.pdf
7	Registration Process:	Purchases can be made by a guest visitor or User on the website, and registration for an account is optional. Registration can be completed at https://frenchmarket.co.za/my-account using your email address and a secure password.
8	Payment Options:	All prices quoted on the Website are in South African Rand (ZAR), and include Value-Added Tax. All prices posted on the Website are exclusive of delivery costs, and delivery costs will be stated separately in our confirmation of your order on the checkout page which may vary for each order based on time, distance and proximity to a major centre. Payment is accepted via credit / debit card (Visa, Mastercard, American Express), or by direct electronic transfers.

9	Delivery of Goods:	See https://frenchmarket.co.za/shipping-returns-exchanges/
10	Province where arbitration will be held:	Western Cape
11	Return / Refund Process:	See https://frenchmarket.co.za/shipping-returns-exchanges/

Please read these terms carefully before browsing this website. Your continued use of this website indicates that you have both read and accept these terms. You cannot use this website if you do not accept these terms. All sections of these terms are applicable to all users unless the section expressly states otherwise.

Clause 1 Introduction

- 1.1 The website, with the URL being set out in item 3 of the above Table ("the Website") is operated and/or owned by the Company, as set out in item 1 of the above Table. The Terms herein are entered into by and between the Company and the User. Any reference to the Company, "we", "our" or "us", shall include our employees, officers, directors, representatives, agents, shareholders, affiliates, subsidiaries, holding companies, related entities, advisers, sub-contractors, service providers and suppliers.
- 1.2 These Terms, including any document incorporated by reference herein, including, but not limited to the Privacy Policy (collectively, the "Terms") apply to any User who uses any one or more of the Services, accesses, refers to, views and/or downloads any information or material made available on the Website for whatever purpose, or Browser who, accesses, refers to, views and/or downloads any information or material made available on the Website for whatever purpose (hereinafter referred to as "User" (where applicable), "you" or "your").
- 1.3 Accessing and/or use of the Website after the Effective Date will signify that you have read, understand, accept, and agree to be bound, and are bound, by the Terms, in your individual capacity and for and on behalf of any entity for whom you use the Website. Further, and where applicable, you represent and warrant that you have the authority to do so and that you are a Competent Person (as defined in the Protection of Personal Information Act, 4 of 2013, as amended).
- 1.4 To the extent permitted by applicable law, we may modify the Terms with prospective effect without prior notice to you, and any revisions to the Terms will take effect when posted on the Website. Such modifications will require acceptance by you prior to your continued use of the Website, and

shall thereby be construed as your consent to the amended or updated Terms. Your only remedy, should you not agree to these Terms, is to refuse acceptance of the amended or updated Terms, thereby preventing your use of this Website.

Clause 2 Terminology

- 2.1 **"Browser"** shall mean any person who visits any page of the Website, whether by landing at the home page or any other page through use of a hyperlink of another website or by direct access to the Website and who has no intention of using, or does not use, the Services offered by us;
- 2.2 **"Business Days"** shall mean any days which are not a Saturday, Sunday or gazetted public holiday in the Republic of South Africa during working hours;
- 2.3 **"Cart"** shall mean the User's Cart on the Website in which it stores intended purchases prior to payment being made;
- 2.4 **"Excluded Loss or Damage"** means any:
- 2.4.1 loss of profit, revenue (including anticipated revenue), use, product or production (including delayed, postponed, interrupted or deferred production and/or inability to produce, deliver or process), bargain, contract, expectation or opportunity, access to markets, goodwill and/or business reputation even if such loss is a direct loss or a loss that flows naturally from the relevant breach;
- 2.4.2 cost of removal or storage of defective goods or plant or materials;
- 2.4.3 indirect loss;
- 2.4.4 loss consequential on other loss;
- 2.4.5 remote or unforeseeable loss or damage;
- 2.4.6 liquidated sums including liquidated damages, penalties, losses or damages arising under any contracts or agreements;
- 2.4.7 kind of loss or damage considered other than loss arising in usual course of things; and
- 2.4.8 any similar loss or damage, whether or not in the reasonable contemplation of the Parties at the time of purchasing Goods and/or Services, and/or agreeing to these Terms,

and in each case arising from or in connection with the performance of these Terms, whether arising from a breach of contract or delict (including

negligence) or under any statute or any other basis, in law or equity, and whether or not foreseeable by us or the User at the time of purchasing Goods and/or Services, and/or agreeing to these Terms;

- 2.5 **"Goods"** shall mean the products as made available to a User for purchase on the Website;
- 2.6 **"Party"** or **"Parties"** shall mean the Company and/or or the User as the context implies;
- 2.7 **"Privacy Policy"** shall mean the Privacy Policy which is to be read as if specifically incorporated in the Terms, which Privacy Policy may be found at the URL recorded in item 6 of the above Table;
- 2.8 **"Registration Process"** refers to the process to be followed by a Browser on our Website in order to create a user account and receive the appropriate discount. This process is set out in item 7 of the above Table;
- 2.9 **"Services"** shall refer to the Services provided by us to the User as set out in item 5 of the above Table;
- 2.10 **"Terms"** shall mean these Terms of Service as read together with the Privacy Policy;
- 2.11 **"User"** shall mean the Browser who completes the Registration Process on the Website in order to make use of the services, and whose details are recorded in item 4 of the above Table. Browsers who purchase as guests without registering will also be referred to as "Users".
- 2.12 **"VAT"** shall mean value-added tax levied in terms of the Value-added Tax Act, 1991.
- 2.13 Any use of the above terminology or other words in the singular, plural, capitalisation and/or he/she or they, are taken as interchangeable and therefore as referring to the same.

Clause 3 Your agreement to these Terms

- 3.1 Subject to, and on the basis of your acceptance of the Terms, we grant to you a limited, revocable, non-transferable license to access and use the Website in accordance with the various policies and agreements which may govern such use and access.

Clause 4 Registration Process

- 4.1 Guest visitors and Users may order and purchase Goods and/or Services through the Website.

- 4.2 In order to register as a User you will, through the Registration Process as recorded in item 7 of the above Table, be prompted to provide login details as well as submit certain personal information as contained in the Privacy Policy.
- 4.3 The provisions pertaining to the processing of your Personal Information are set out more fully in our Privacy Policy, which may be found at the URL recorded in item 6 of the above Table.
- 4.4 In the event of a User being of the view that their login details are being used by someone else, please contact us immediately on the email address recorded in item 1 of the above Table.

Clause 5 Purchase of Goods and/or Services

- 5.1 The Goods and/or Services as selected by the User for purchase together with the individual price thereof shall be reflected in the User's Cart. The price of each of the Goods and/or Services shall automatically be tallied in the Cart, as a total, which total shall be inclusive of VAT.
- 5.2 The cost of delivery of the Goods shall also be included in the total as recorded in the User's Cart.

Clause 6 Payment

- 6.1 The payment options available to a User are those set out in item 8 of the above Table.
- 6.2 Goods will only be released for delivery and/or Services rendered once payment has been received.

Clause 7 Delivery / Collection of Goods

- 7.1 Physical Goods shall be delivered to the User by the method recorded in item 9 of the above Table.
- 7.2 Our obligation to provide the Goods to you is fulfilled upon delivery thereof. We are not responsible for any loss or unauthorised use of the Goods after provision thereof to you.

Clause 8 Return / Refund Policy

- 8.1 Our return and refund policy may be found in item 11 of the above Table.
- 8.2 To ensure that your request in respect of a refund or return is processed expeditiously, we require that you follow the procedure and adhere to the requirements set out therein.

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

Clause 9 Warranties by the User

9.1 The User warrants and represents that the personal information provided to us is and shall remain accurate, true and correct and that the User will update the personal information held by us to reflect any changes as soon as possible.

9.2 The User further warrants that when registering on the Website it:

9.2.1 is not impersonating any person; and

9.2.2 is not violating any applicable law regarding use of personal or identification information.

9.3 Further and insofar as the Registration Process is concerned, the User warrants that the login details shall:

9.3.1 be used for personal use only; and

9.3.2 not be disclosed by a User to any third party.

9.4 The User agrees that, once the correct login details relating to the User's account have been entered, irrespective of whether the use of the log in details is unauthorised or fraudulent, the User will be liable for payment of any such Goods and/or Services purchased.

Clause 10 Warranties by the Company

10.1 We make no representation or warranty (express or implied) that the Website, Goods or Services will:

10.1.1 meet a User's needs;

10.1.2 be accessible at all times;

10.1.3 be accurate, complete or current; or

10.1.4 be free from viruses.

10.2 Subject to any express terms, we make no representation or warranty as to the volume or subject area of Goods and/or Services accessible through the Website.

10.3 Except for any express warranties in these Terms, the Goods and Services are provided "as is". We make no other warranties, express or implied, statutory or otherwise, including but not limited to warranties of

merchantability, title, fitness for a particular purpose or non-infringement. We do not provide any warranties against viruses, spyware or malware that may be installed on your computer as a result of you accessing or using the Website.

10.4 We do not warrant that the use of the Website will be uninterrupted or error free, nor do we warrant that we will review information for accuracy.

10.5 We shall not be liable for delays, interruptions, service failures or other problems inherent in use of the internet and electronic communications or other systems outside our reasonable control. While a User may have statutory rights, you agree that the duration of any such statutory warranties will be limited to the shortest period to the extent permitted by required law.

Clause 11 Unauthorized use of the Website or email addresses as provided by us

11.1 A User may not use the Website for any objectionable or unlawful purpose.

11.2 A User undertakes not to send to us spam mail, or make use of other unsolicited mass e-mailing techniques.

11.3 A User shall not introduce any virus, worm, trojan horse, malicious code or other program which may damage computers or other computer-based equipment through email communication with us.

11.4 A User may not sell, redistribute or use information contained on the Website for a commercial purpose without our prior written consent.

11.5 A User may not remove or alter our copyright notices or other means of identification including any watermarks, as they appear on the Website or any of our emails.

11.6 A User understands and agrees that it is solely responsible for compliance with any and all laws, rules and regulations that may apply to its use of the Website, Goods and/or Services.

Clause 12 Links to other Websites

12.1 The Website may contain links or portals to other websites. We have no control over websites operated by third parties and the User agrees that we are not responsible for and will have no liability in connection with a User's access to or use of any third-party website.

Clause 13 Limitation of Liability and Indemnity

13.1 The User acknowledges and agrees that:

- 13.1.1 it has determined that the Goods and/or Services are fit for the purpose for which the User requires them;
- 13.1.2 it has not relied on our skill and judgment in selecting the Goods and/or Services.
- 13.2 We are not subject to, and the User releases us from any liability (including but not limited to Excluded Loss and Damage) arising from any delay in delivery of or any defect or fault in the Goods and/or Services to the full extent permitted by law.
- 13.3 If the provisions of the Consumer Protection Act 68 of 2008 ("the CPA") or any other act or the general law impose on us a liability for a defect or fault in the Goods and/or Services then, to the extent to which we is entitled to do so, our liability is limited, at our option, to:
 - 13.3.1 replacement or repair of the Goods and/or Services;
 - 13.3.2 supply of equivalent Goods and/or Services; or
 - 13.3.3 payment of the cost of replacing or repairing the Goods or of acquiring equivalent products,
and in any case:
 - 13.3.4 we will not be liable for any Excluded Loss or Damage; and
 - 13.3.5 Our total liability to the Customer is limited to the invoice value of the Goods and/or Services.
- 13.4 The Website shall be used entirely at a User's own risk.
- 13.5 We are not responsible for, and the User agrees that we will have no liability in relation to, the use of and conduct in connection with the Website, or any other person's use of or conduct in connection with the Website, in any circumstance.
- 13.6 We cannot guarantee or warrant that any file downloaded from the Website or delivered to you via email will be free of infection or virus, worms, trojan horses or other code that has contaminating or destructive qualities. A User is responsible for implementing appropriate processes, systems and procedures to protect itself from this type of issue.
- 13.7 A User indemnifies us, and agrees to keep us indemnified, from and against any claim, loss, damage, cost or expense that a User may suffer or incur as a result of or in connection with a User's improper use of or conduct in connection with the Website, including any breach by a User of these terms or any applicable law or licensing requirements.

- 13.8 To the maximum extent permitted by law we exclude all implied representations and warranties which, but for these terms, might apply in relation to a User's use of the Website.
- 13.9 To the extent that our liability cannot be excluded by law, our maximum liability, whether in contract, equity, statute or delict (including negligence), to a User will be limited to the minimum amount imposed by such law.
- 13.10 Notwithstanding anything to the contrary in these terms, in no circumstances will we be liable for any indirect, punitive or consequential loss or damages, loss of income, profits, goodwill, data, contracts, use of money or any loss or damages arising from or in any way connected to interruption of the Services of any type, whether in delict, contract or otherwise.

Clause 14 Copyright

- 14.1 The contents of the Website are the property of the Company, unless specified otherwise, and are protected by South African and international copyright laws. Furthermore, the compilation (meaning the collection, arrangement, and assembly) of all content on the Website and/or the Services, is our property, unless credit is attributed to the author thereof, and is, likewise, protected by South African and international copyright laws.
- 14.2 Except as stated in the Terms, none of the contents may be copied, reproduced, distributed, republished, downloaded, displayed, posted or transmitted in any form or by any means, including, but not limited to, electronic, mechanical, photocopying, recording, or otherwise, except as permitted by the fair use privilege under the South African copyright laws or without our prior written permission, which should such consent be provided, we reserve our right to withdraw such consent at any stage, in our sole and absolute discretion.
- 14.3 You are expressly prohibited to "mirror" any content, contained on the Website, on any other server unless our prior written permission is obtained, which should such consent be provided, we reserve our right to withdraw such consent at any stage, in our sole and absolute discretion.
- 14.4 The User is granted a limited, revocable, and non-exclusive right to create a hyperlink to the Website, so long as the link does not portray us, our affiliates, Goods or Services in a false, misleading, derogatory, or otherwise offensive manner. You may not use our logo or other proprietary graphic or trademark as part of the link without our permission or the permission of our affiliates or content suppliers.

14.5 All trademarks and copyrights, together with any other intellectual property rights, in and to any of the content of the Website, where not evidently that of third parties, are our exclusive property.

Clause 15 Intellectual Property

15.1 You undertake not to attempt to decipher, decompile, disassemble or reverse engineer any of the software or code comprising or in any way making up a part of the Website including any algorithm used by us.

15.2 We own or are licensed to use all intellectual property on the Website. You may not use any of our intellectual property for any purpose other than as may be required to use the Website for its intended purpose.

Clause 16 Breach

16.1 If either Party commits a breach of the Terms and fails to remedy such breach within 7 (seven) business days of receipt of written notice requiring the breach to be remedied, then the Party giving notice shall be entitled, at its option, either to cancel the Terms and claim damages or alternatively to claim specific performance of all the defaulting Party's obligations, together with damages, if any, whether or not such obligations have fallen due for performance.

Clause 17 Dispute Resolution

17.1 Any dispute which arises between the Parties in respect of the Terms shall require the Parties to use their best endeavours to resolve the dispute informally within 7 (seven) business days of the dispute having been raised in writing.

17.2 If either Party provides written notification to the other that such attempt has failed then each Party shall attempt to agree upon the appointment of a suitably qualified mediator, within 10 (ten) business days of such dispute being referred.

17.3 If agreement is not reached as to the appointment of such mediator within 10 (ten) business days after either Party has in writing called for the appointment of a mediator, or where an appointment has been agreed upon and such mediator is not able to mediate a resolution of such dispute within 30 (thirty) days after such appointment then any Party may give written notice to the other Parties referring the dispute to arbitration in accordance with the rules of Arbitration Foundation of South Africa ("AFSA") by an arbitrator or arbitrators appointed by AFSA.

17.4 Either Party may demand that a dispute be referred to arbitration by giving written notice to that effect to the other Party. This clause shall not preclude

either Party from obtaining interim relief on an urgent basis from a court of competent jurisdiction pending the decision of the arbitrator.

- 17.5 The arbitration shall be held –
 - 17.5.1 in the province reflected in item 10 of the above Table, or other venue agreed by the Parties in writing;
 - 17.5.2 in English; and
 - 17.5.3 immediately and with a view to its being completed within 21 (twenty one) days after it is demanded.
 - 17.5.4 The Parties irrevocably agree that the decision in arbitration proceedings:
 - 17.5.4.1 shall be final and binding upon them;
 - 17.5.4.2 shall be carried into effect;
 - 17.5.4.3 may be made an order of any court of competent jurisdiction.

Clause 18 Assignment and Novation:

- 18.1 We may assign or novate any of our rights or obligations under these Terms without a User's consent. You may not assign or novate any of your rights.

Clause 19 Force Majeure:

- 19.1 The failure of either Party to fulfil any of their obligations under these Terms shall not be considered to be a breach of, or default provided such inability arises from an event of Force Majeure, and that either of the Parties who may be affected by such an event has taken all reasonable precautions, due care and reasonable alternative measures in order to meet these Terms, and has informed the other as soon as possible about the occurrence of such an event.
- 19.2 During the subsistence of Force Majeure, the performance of both Parties under these Terms shall be suspended, on condition that either of them may elect to cancel any Services should the event of Force Majeure continues for more than 14 (fourteen) days by giving written notice to the other.

Clause 20 General

- 20.1 To the extent permitted by law, these Terms shall be governed by and be construed in accordance with South African law, and any dispute arising out of these Terms shall be submitted to the competent South African courts having the requisite jurisdiction to hear the matter.

20.2 Subject to the dispute resolution provisions above, to the extent necessary and/or possible, you consent to the non-exclusive jurisdiction of the High Court in Gauteng or an alternative appropriate South African court seized with appropriate jurisdiction in all disputes arising out of the Terms, our Services, and/or related agreements incorporated by reference.

Clause 21 Severance

21.1 If any of these terms are deemed invalid or unenforceable for any reason (including, but not limited to the exclusions and limitations set out above), then the invalid or unenforceable provision will be severed from these Terms and the remaining terms will continue to apply. Failure by us to enforce any of the provisions set out in these Terms and/or any other agreement, or failure to exercise any option to terminate, shall not be construed as a waiver of such provisions and shall not affect the validity of these Terms or of any agreement or any part thereof, or the right thereafter to enforce each and every provision.

Clause 22 *Domicilium Citandi Et Executandi* and Contact Information

22.1 We choose as our *domicilium citandi et executandi* for the purpose of legal proceedings and for the purpose of giving or sending any notice provided for or necessary of these Terms, the address reflected in item 1 of the above Table, and the User chooses the address reflected in item 4 of the above Table as its *domicilium citandi et executandi* for the purpose of legal proceedings and for the purpose of giving or sending any notice provided for or necessary of these Terms.

22.2 Both the User and the Company may change its domicile to any other physical address or email address by written notice to the other to that effect. Such change of address will be effective 7 (Seven) days after receipt of notice of change of domicile.

22.3 All notices to be given in terms of these Terms will:

22.3.1 be given in writing;

22.3.2 be delivered or sent by email; and

22.3.3 be presumed to have been received on the date of delivery.