

LAVANA THAI SPA CC – TERMS AND CONDITIONS

These terms and conditions (“**Terms**”) govern all bookings made with, and Thai massage services provided, by Lavana Thai Spa CC (Registration Number 2010/075864/23) (“**Lavana Thai Spa**”). Similarly, the access and use of Lavana Thai Spa’s website will be governed by these Terms as well.

These Terms shall take precedence over any other terms and conditions which may form part of your documentation, unless agreed to in writing and signed by both you and Lavana Thai Spa.

1. DEFINITIONS:

Unless inconsistent with the context, the expressions set forth below shall bear the following meanings:

- 1.1. “**Data Protection Legislation**” means the laws relating to data protection in South Africa, including, but not limited to, the Electronic Communication and Transactions Act 25 of 2002 (ECTA), the Consumer Protection Act (CPA) 68 of 2008 and the Protection of Personal Information Act (POPI);
- 1.2. “**Intellectual Property**” shall include, without limitation, any know-how, patent, copyright, registered design, trademark or other industrial or intellectual property rights, whether registered or not and whether or not capable of being registered;
- 1.3. “**Lavana Thai Spa**” means Lavana Thai Spa CC, registration number: 1987/020402/23 with its registered address at Shop B05, Benmore Gardens Shopping Centre, Benmore Road, Benmore, 2010.
- 1.4. “**Parties**” means Lavana Thai Spa and you as the Party engaging with Lavana Thai Spa for purposes of booking Thai massage services with Lavana Thai Spa and Party shall mean either one;
- 1.5. “**Personal Data**” means all personal data for which you are the responsible party (where, for the purposes of this definition, “Personal Data” and “responsible party” have the meanings given to them by POPI) to which Lavana Thai Spa have been given access or which is generated by or on your behalf, including, inter alia-
 - 1.5.1. Race, sex, gender, sexual orientation, pregnancy, marital status, nationality, ethnic or social origin, colour, age, physical or mental health, well-being, disability, religion, conscience, belief, cultural affiliation, language and birth;

- 1.5.2. Education, medical, financial, criminal or employment history;
- 1.5.3. Names, identity number and/or any other personal identifier, including any number(s), which may uniquely identify a data subject, account or client number, password, pin code, customer or data subject code or number, numeric, alpha, or alphanumeric or configuration of any nature, symbol, e-mail address, domain name or IP address, physical address, cellular phone number, telephone number or other assignment;
- 1.5.4. Blood type, fingerprint or any other biometric information;
- 1.5.5. Personal opinions, views or preferences;
- 1.5.6. Correspondence that is implicitly or expressly of a personal, private or confidential nature (or further correspondence that would reveal the contents of the original correspondence); and
- 1.5.7. Corporate structure, composition and business operations (in circumstances where the data subject is a juristic person) irrespective of whether such information is in the public domain or not;
- 1.6. **"POPI"** means the Protection of Personal Information Act, No. 4 of 2013;
- 1.7. **"Processing"** means the collection, receipt, recording, organization, collation, storage, updating or modification, testing of, retrieval, alteration, consultation or use;
 - 1.7.1. dissemination by means of transmission, distribution or making available in any other form by electronic communications or other means; or
 - 1.7.2. merging, linking, blocking, degradation, erasure or destruction; and "Process" has a corresponding meaning.
- 1.8. **"Services"** means the booking and Thai massage services rendered by Lavana Thai Spa.
- 1.9. **"Website"** means the website of Lavana Thai Spa at <https://www.lavanathaispa.co.za>

2. CONFIDENTIALITY:

- 2.1. Both Parties agree that Lavana Thai Spa will, at all times, treat all information in connection with and / or relating to the other Party, its business and all matter incidental thereto (the "Confidential Information") as strictly confidential and

shall not, without written consent (which consent will not be unreasonably withheld) from the other Party disclose such Confidential Information to any other person and / or make use of such Confidential Information for any purpose other than in connection with the rendering of the Services.

3. THE WEB SITE

3.1. Usage

- 3.1.1. Lavana Thai Spa Website is the registered property of Lavana Thai Spa.
- 3.1.2. Any persons accessing and/or using Lavana Thai Spa Website for any reason whatsoever subjects themselves to and agrees to the terms and conditions and privacy policy of Lavana Thai Spa when accessing the Website as set out below.
- 3.1.3. Lavana Thai Spa expressly reserves the right, in its sole and absolute discretion, to alter and/or amend any criteria or information set out in the Website without prior notice.
- 3.1.4. Nothing on the Website shall be construed as an offer by Lavana Thai Spa to you, the user, but merely an invitation to do business.
- 3.1.5. You may send content and other communications to and/or via this Website provided that the content is not illegal, obscene, objectionable, threatening, defamatory, invasive of privacy, infringing of intellectual property rights, or otherwise injurious to third parties and does not consist of or contain software viruses, political campaigning, commercial solicitation, chain letters, mass mailings, or any form of "spam." You may not use a false email address, impersonate any person or entity, or otherwise mislead as to the origin of a communication. Lavana Thai Spa reserves the right to remove or edit such content in its sole discretion.
- 3.1.6. You hereby represent and warrant that you own or otherwise control all the rights to the content that you post on this Website; that the content is accurate; that use of the content you supply does not violate this policy and will not cause injury to any person or entity; and that you indemnify Lavana Thai Spa or its affiliates from all and any claims resulting from content you supply to Lavana Thai Spa. Lavana Thai Spa shall not be held responsible or liable for any content posted on Lavana Thai Spa Websites.

3.2. Intellectual Property

- 3.2.1. All content on the Website (unless explicitly stated), and any work submitted to clients or potential clients, including but not limited to, text, graphics, logos, button icons, images, clips, digital downloads, data compilations, and software, is the property of Lavana Thai Spa or licensed to Lavana Thai Spa and as such, is protected from infringement by domestic and international laws, legislation and treaties. Lavana Thai Spa expressly reserves all rights pertaining to such content.
- 3.2.2. Lavana Thai Spa and its affiliates respect the intellectual property of others. If you believe that your work has been copied in a way that constitutes copyright infringement, an infringement of any intellectual property right, please notify us by e-mail or post at the addresses below:
E-mail: info@lavana.co.za
Postal address: Postnet Suite 858
Private Bag X9
Benmore
2010
- 3.2.3. All content, trademarks and data on this Website and any work submitted to clients or potential clients, including but not limited to, software, databases, text, graphics, icons, hyperlinks, private information, and designs are the property of or are licensed to Lavana Thai Spa, and as such are protected from infringement by domestic and international laws, legislation and treaties.
- 3.2.4. “Lavana Thai Spa” and other marks indicated on Lavana Thai Spa Website are the trademarks or trade dress of Lavana Thai Spa. These and other Lavana Thai Spa graphics, logos, page headers, button icons, scripts, product and service names are trademarks or trade dress of Lavana Thai Spa.
- 3.2.5. Lavana Thai Spa trademarks and trade dress may not be used in connection with any product or service without the written consent of Lavana Thai Spa.
- 3.2.6. Lavana Thai Spa trademarks and trade dress may not be used in any manner that is likely to cause confusion amongst its clients, or in any manner that disparages, prejudices or discredits Lavana Thai Spa.
- 3.2.7. All other trademarks not owned by Lavana Thai Spa that appear on this Website are the property of their respective owners, who may or may not be affiliated with, connected to, or sponsored by Lavana Thai Spa.

3.3. Licenses And Web Site Access

- 3.3.1. Lavana Thai Spa hereby grants you a limited license to access and make personal use of the Website provided that in making use of the Website you do not download any content, other than for page caching purposes, except where the facility to download is expressly provided or express written consent to do so is otherwise given by Lavana Thai Spa. You are expressly prohibited from modifying any portion of this Website, whether in part or whole, except with the express written consent of Lavana Thai Spa.
- 3.3.2. This license does not include any right of resale or commercial use of this Website or its contents. For the purposes of this clause 4.3, any collection and/or use of any listings and/or descriptions; any derivative use of this Website or its contents; any downloading or copying of account information for the benefit of another merchant; or any use of data mining, robots, or similar data gathering and extraction tools for any commercial purpose is expressly prohibited unless stated otherwise.
- 3.3.3. It is expressly prohibited to frame or utilize framing techniques to enclose and/or mask any trademark, logo, or other proprietary information (including images, text, page layout, or form) of Lavana Thai Spa and/or our affiliates without its express written consent.
- 3.3.4. It is expressly prohibited to use any meta tags or any other “hidden text” utilizing Lavana Thai Spa’s name or trademarks without the express written consent of Lavana Thai Spa.
- 3.3.5. Any unauthorized use of this Website, its content or applications terminates the permission or license granted by Lavana Thai Spa. You are granted a limited, revocable, and non-exclusive right to create a hyperlink to the home page of Lavana Thai Spa provided the link does not portray Lavana Thai Spa, its affiliates, or their products or services in a false, misleading, derogatory, or otherwise offensive manner.
- 3.3.6. You may not use any Lavana Thai Spa logo or other proprietary graphic, trademark, or material as part of the link without express written permission from Lavana Thai Spa.

3.4. Disclosures Required By Section 43 Of The South African Electronic Communications And Transactions Act (ECTA):

- 3.4.1. The full name and legal status of the web site owner is: Lavana Thai Spa CC (Registration Number 2010/075864/23).

- 3.4.2. The full address of the web site owner is: www.lavanathaispa.co.za
- 3.4.3. Member: George Kiros
- 3.4.4. Physical address for receipt of legal service: Shop B05, Benmore Gardens Shopping Centre, Benmore Road, Benmore, 2010

3.5. **Disclaimer of Warranties and Limitation of Liability:**

- 3.5.1. Subject to the provisions of sections 43(5) and 43(6) of the ECTA, Lavana Thai Spa shall not be liable for any damage, loss or liability of whatsoever nature arising from the use or inability to use this web site or the services or content provided from and through this Website. Furthermore, Lavana Thai Spa makes no representations or warranties, implied or otherwise, that, amongst others, the content and technology available from this Website are free from errors or omissions or that the service will be 100% uninterrupted and error free.
- 3.5.2. Lavana Thai Spa will not be liable for any loss or damages arising, whatever the cause, in accordance with these Terms.
- 3.5.3. Should Lavana Thai Spa be found to be liable to you for a particular act or omission then Lavana Thai Spa's liability will be limited to fees already paid by you for the Thai massage services forming the subject of the dispute.

4. PROTECTION OF PERSONAL INFORMATION ("POPI"):

- 4.1. Lavana Thai Spa will only Process or disclose Personal Data in accordance with applicable laws, in terms of these Terms and in accordance with any written instructions, requirements or specific directions from you.
- 4.2. Lavana Thai Spa will ensure that all staff members of Lavana Thai Spa and any other persons that has access to your Personal Data are bound by the appropriate legally binding obligations in relation to your Personal Data.
- 4.3. Lavana Thai Spa will take appropriate, reasonable and technical measures to ensure that the integrity of your Personal Data in possession or under control of Lavana Thai Spa is secure and your Personal Data in possession or under control of Lavana Thai Spa remains available to you as and when you need it.

5. NOTIFICATION OF PERSONAL DATA SECURITY BREACH:

- 5.1. Lavana Thai Spa will notify you immediately when upon becoming aware that the Personal Data of a data subject has been accessed or acquired by an

unauthorised person and take all appropriate steps to limit the compromise of Personal Data and to restore the integrity of the affected information systems as quickly as possible, Lavana Thai Spa will assist you to report all relevant facts relating to the compromise and provide you with details of the Personal Data affected by the compromise.

- 5.2. If Lavana Thai Spa or any third-party to which the Personal Data has been disclosed pursuant to these Terms, is required by law, regulation or court order, to disclose or process any Personal Data, Lavana Thai Spa will advise you thereof prior to disclosure or Processing.
- 5.3. Lavana Thai Spa will not transfer Personal Data provided to you outside of South Africa unless you authorise such transfer in writing and Lavana Thai Spa will comply with your express instructions for cross-border transfers of any Personal Data.
- 5.4. On condition that undertakings provided by Lavana Thai Spa and if content was approved or assumed to have been approved by you and was actually implemented, presented, published and/or communicated by us in such approved format, Lavana Thai Spa will not be liable for any loss or damage of whatsoever nature and howsoever arising, including but not limited to, loss of profit and direct, indirect, incidental, special or consequential loss or damage, whether arising under contract, delict or otherwise, which may be suffered or incurred by you or any third-party as a result of the provision of the Services in terms of these Terms.
- 5.5. Both Parties undertake to use Lavana Thai Spa's reasonable endeavours to procure that any of the other person's data operators (as defined in POPI), agents and contractors comply with the Data Protection Legislation and all other applicable data protection legislation and regulations about the performance of the other person's obligations and exercise of their rights under these Terms.
- 5.6. Both Parties undertake-
 - 5.6.1. to treat the Personal Data as confidential information;
 - 5.6.2. not to use or knowingly permit any third-party to use, or have access to, the Personal Data for any purpose other than as is expressly permitted by these Terms;

- 5.6.3. that Lavana Thai Spa will not use Personal Data held by Lavana Thai Spa pursuant to these Terms for any purpose that is inconsistent with those purposes notified to the relevant data subject (as defined by the Data Protection Legislation) on or before the time of collection of that Personal Data.

6. RETENTION AND DESTRUCTION:

- 6.1. Lavana Thai Spa will store all Personal Data which it processes for the minimum time periods stipulated by you in writing and shall be required to destroy all Personal Data relating to the data subjects in compliance with the destruction time periods stipulated by you.

7. FORCE MAJEURE:

- 7.1. If either Party is prevented or restricted from carrying out all or any of their obligations under these Terms because of a strike, lock-out, fire, explosion, flood, riot, war, accident, act of God, embargo, legislation, shortage or a breakdown in transportation facilities, civil commotion, unrest or disturbances, cessation of labours government interference ("the event"), the Party who is affected by this event will be relieved of their obligations under these Terms during the time the event carries on and shall not be liable for any delay or failure in the performance of any obligations under these Terms or loss or damage either general, special or consequential which the other Party may suffer due to the event.
- 7.2. Once the event has ended the Party who is affected by the event must give notice to the other Party that such event has ended. Should the event continue for a period of more than 90 (ninety) days, the other Party will be allowed to immediately cancel these Terms.

8. ASSIGNMENT:

- 8.1. You will not be allowed to cede, delegate, assign or otherwise transfer all or any of your rights under these Terms unless you written permission from Lavana Thai Spa has been given and such permission shall not be withheld unreasonably.

9. DISPUTES:

- 9.1. Should a dispute arise that cannot be resolved amongst the Parties, Lavana Thai Spa will allow the directors / owners / authorised parties of both Parties to attempt to resolve the dispute within 14 (fourteen) days of being asked to do so.
- 9.2. If the directors / owners / authorised parties fail to resolve the dispute, both Parties agree and consent that action can be instituted in the Magistrates Court.

10. SEVERABILITY:

- 10.1. If any of the clauses or term hereof be found, by a competent court, to be invalid, unenforceable or illegal, the remaining clauses will be deemed to be severable from the unenforceable clauses and will continue in full force and effect unless such invalidity, unenforceability or illegality goes to the root of these Terms.

11. GENERAL:

- 11.1. Neither Party will be bound by any direct or indirect term, representation or promise that is not recorded in these Terms.
- 11.2. Any permission or approval that might be given by one Party (the “grantor”) to the other Party (the grantee) will not be seen as a waiver or abandonment of any of the rights of the grantor, who shall not thereby be excluded from exercising any rights against the grantee which may have arisen in the past or which might arise in the future.
- 11.3. Nothing in these Terms will form a partnership, joint venture, agency or employment between the Parties, and neither Party will be allowed to bind, or contract in the name of the other or to create a liability against the other in any way for any purpose.

ACCEPTANCE OF THESE TERMS BY YOU SHALL BE DEEMED TO HAVE TAKEN PLACE ONCE YOU MAKE A BOOKING FOR THAI MASSAGE SERVICES OR BY THE USE OF LAVANA THAI SPA'S WEBSITE. EVERY INSTANCE OF THE SERVICES AND USE OF THE WEBSITE SHALL BE SUBJECT TO THE ABOVE TERMS AND CONDITIONS.