

WWW.POLYPHAGOUS-SHOT-HOLE-BORER.CO.ZA – WEBSITE TERMS AND CONDITIONS OF USE

1. Introduction

- 1.1. Welcome to www.polyphagous-shot-hole-borer.co.za (“**the Website**”). The Website is owned and operated by Heuristic Guru Proprietary Limited (Registration Number: 2016/468647/07) (“**PSHB.co.za**”, “**we**”, “**us**” and “**our**”).
- 1.2. The Website provides information on protecting trees against Polyphagous Shot Hole Borer (PSHB), and enables you to browse suppliers of, and to make online purchases of, products and services related to the management of PSHB.
- 1.3. These terms and conditions (“**Terms and Conditions**”) govern the browsing, ordering and purchase by you of services listed on the Website (“**Services**”), as well as your use of the Website generally.
- 1.4. The Terms and Conditions are binding and enforceable against every person that accesses or uses the Website (“**you**”, “**your**” or “**user**”). Use of the Website is subject to the Terms and Conditions. By using the Website in any way, you are deemed to have accepted all the Terms and Conditions unconditionally. You must not use the Website if you do not agree to the Terms and Conditions.
- 1.5. Our store is hosted on Shopify Inc. They provide us with the online e-commerce platform that allows us to sell our products and services to you.

2. Important Notice

- 2.1. These Terms and Conditions apply to users who are consumers for purposes of the Consumer Protection Act, 68 of 2008 (the “**CPA**”).
- 2.2. **These Terms and Conditions contain provisions that appear in similar text and style to this clause and which:**
 - 2.2.1. **may limit the risk or liability of PSHB.co.za or a third party; and/or**
 - 2.2.2. **may create risk or liability for the user; and/or**
 - 2.2.3. **may compel the user to indemnify PSHB.co.za or a third party; and/or**
 - 2.2.4. **serves as an acknowledgement, by the user, of a fact.**
- 2.3. **Your attention is drawn to these Terms and Conditions because they are important and should be carefully noted.**
- 2.4. If there is any provision in these Terms and Conditions that you do not understand, it is your responsibility to ask us to explain it to you before you accept the Terms and Conditions or continue using the Website.
- 2.5. Nothing in these Terms and Conditions is intended or must be understood to unlawfully restrict, limit or avoid any right or obligation, as the case may be, created for either you or PSHB.co.za in terms of the CPA.
- 2.6. PSHB.co.za permits the use of this Website subject to the Terms and Conditions. By using this Website in any way, you shall be deemed to have accepted all the Terms and

Conditions unconditionally. You must not use this Website if you do not agree to the Terms and Conditions.

3. Use of the Website

- 3.1. By using the Website to purchase Services, you warrant that you are 18 (eighteen) years of age or older and of full legal capacity.**
- 3.2. If you are under the age of 18 (eighteen) or if you are not legally permitted to enter into a binding agreement, then you may use the Website to purchase Services only with the involvement and supervision of your parent or legal guardian. If your parent or legal guardian supervises you and gives his/her consent, then such person agrees to be bound to these Terms and Conditions and to be liable and responsible for you and all your obligations under these Terms and Conditions.**
- 3.3. You may not use any device, software or other instrument to interfere with the proper working of the Website. In addition, you may not in any way use any robot, spider, other automatic device, or manual process to monitor, copy, distribute or modify the Website or the information contained herein, without our prior written consent.**
- 3.4. You may not use the Website to distribute material which is defamatory, offensive, contains or amounts to hate speech or is otherwise unlawful.**
- 3.5. The use of the Website and/or any information provided on the Website is entirely at your own risk and you assume full responsibility for any risk or loss resulting from use of the Website or reliance on any information on the Website.**
- 3.6. Whilst we take reasonable measures to ensure that the content of the Website is accurate and complete, we make no representations or warranties, whether express or implied, as to the accuracy, completeness or reliability of any information on the Website, nor as to the operation, integrity, availability or functionality of the Website from time to time.**
- 3.7. We will not be liable for any damage, loss or expenses, whether direct, indirect or consequential in nature, arising out of or in connection with your access to or use of the Website, and/or any information provided on the Website, unless otherwise provided by law.**
- 3.8. The Services available for purchase on the Website are subject to such warranties (if any) as the service providers providing those Services (“the Service Providers”) may give from time to time. We do not give any warranties in relation to any of the Services listed on the Website, and the Website itself and all information provided on the Website is provided “as is” without warranty of any kind, either express or implied, including, but not limited to, the implied warranties of merchantability, fitness for a particular purpose, completeness, or non-infringement, as may be allowed in law.**
- 3.9. In addition to the disclaimers contained elsewhere in these Terms and Conditions, we do not warrant or represent that the information or files available on the Website are free of viruses, spyware, malware, trojans, destructive materials or any other data or code which is able to corrupt or otherwise impede in any manner the operation, stability, security functionality or content of your computer system, hardware or software in any way (“Viruses”).**

- 3.10. **You accept all risk associated with the existence of such Viruses, save where such risks arise out of the gross negligence or wilful misconduct of PSHB.co.za, its employees, agents or authorised representatives.**

4. Modifications to the Service and Prices

- 4.1. Prices for our products are subject to change without notice.
- 4.2. We reserve the right at any time to modify or discontinue the Service (or any part or content thereof) without notice at any time.
- 4.3. We shall not be liable to you or to any third-party for any modification, price change, suspension or discontinuance of the Service.

5. Products or Services

- 5.1. Certain products or services may be available exclusively online through the website. These products or services may have limited quantities and are subject to return or exchange only according to our Return Policy.
- 5.2. We have made every effort to display as accurately as possible the colors and images of our products that appear at the store. We cannot guarantee that your computer monitor's display of any color will be accurate.
- 5.3. We reserve the right, but are not obligated, to limit the sales of our products or Services to any person, geographic region or jurisdiction. We may exercise this right on a case-by-case basis. We reserve the right to limit the quantities of any products or services that we offer. All descriptions of products or product pricing are subject to change at anytime without notice, at the sole discretion of us. We reserve the right to discontinue any product at any time. Any offer for any product or service made on this site is void where prohibited.
- 5.4. We do not warrant that the quality of any products, services, information, or other material purchased or obtained by you will meet your expectations, or that any errors in the Service will be corrected.

6. Listing of Service Providers

- 6.1. For every Service that is available for purchase via the Website, the Website will list a range of independent third party service providers that are able to provide the Service concerned ("**Service Providers**").
- 6.2. It is your (the user's) choice as to which Service Provider you select to provide the Service you have purchased. Selection of a Service Provider is made during the check-out process.
- 6.3. **PSHB.co.za gives no warranties and makes no representations in relation to any of the Service Providers listed on the Website from time to time. The use by you of any such Service Provider is entirely at your own risk and you assume full responsibility for any risk or loss resulting from your selection of or use of such Service Provider.**
- 6.4. The range of Service Providers listed on the Website is not a complete list of all of the service providers which are or may be able to provide services the same as or similar to

the Services, in South Africa. If you wish to utilise a service provider other than one of those listed on the Website, you must not purchase the Services via the Website.

7. Booking and Purchasing a Service via the Website

- 7.1. Should you wish to purchase a Service offered on the Website, you may do so by selecting the Service you want, choosing your Service Provider, and completing the check-out and payment process.
- 7.2. Upon completion of that process you will receive an e-mail communication from us noting the placement by you of an order for a Service, and confirming that you have paid. This e-mail is for administrative purposes only, and is not a confirmation that your Service is booked.
- 7.3. You will receive a second e-mail from us, either:
 - 7.3.1. confirming that your Service has been purchased, and notifying you that your Service Provider will contact you to arrange a date and time for provision of the Service; or
 - 7.3.2. notifying you that your purchase cannot be fulfilled, that it has been cancelled and that any amount paid by you for the Service concerned will be refunded to you.
- 7.4. Placing one or more Services in your cart on the Website without completing the purchase and payment cycle does not constitute an order for, or the purchase of, such Services. We may remove Services from your cart if those Services are no longer available, or the price of Services in your cart might change without notice to you. PSHB.co.za will have no liability to you if such Services are not available or have undergone a change in price by the time you complete or attempt to complete the purchase cycle at a later stage.

8. Payment

- 8.1. We are committed to providing secure online payment facilities. Payment for Services can be made by way of:
 - 8.1.1. credit card; or
 - 8.1.2. instant EFT.
- 8.2. Once you have selected your payment method, you will be directed to a link to a secure site for payment of the purchase price for the Service that you have purchased.
- 8.3. If you choose to make payment with a credit card, we may need additional information from you in order to authorise and/or verify the validity of payment. In those cases, delivery of the Service may be delayed until such time as the additional information is received by us and authorisation is obtained by us for the amounts. If we do not receive authorisation, your order for the Service will be cancelled. **By paying with a credit card, you warrant that:**
 - 8.3.1. you are fully authorised to use the credit card supplied for purposes of paying for the Service and

- 8.3.2. your credit card has sufficient available funds to cover all the costs incurred as a result of purchasing the Service on the Website.
- 8.4. PayFast is an Instant EFT payment option available to all customers who bank with Capitec, ABSA, First National Bank, Investec, Nedbank or Standard Bank.
- 8.5. PayFast acts as a proxy between you (the buyer) and the bank to facilitate the payment process between the buyer and the seller. Your use of any PayFast services is governed by and subject to PayFast's own terms and conditions of use, and PSHB.co.za shall not be liable to you for any loss or damage arising out of your use of PayFast services.
- 8.6. We will send you email communications about your order and payment. You may also contact us at info@pshb.co.za to obtain a full record of your payment.

9. Fulfilment of Services

- 9.1. Once you have successfully purchased a Service on the Website, you will receive the confirmatory e-mail contemplated in clause 5.3.1 above ("**Confirmation E-mail**").
- 9.2. The Service Provider/s that you selected for the provision of the Service/s so purchased will make direct contact with you, within 2 (two) working days after the date of the Confirmation Email, to arrange convenient dates and times for provision of the Service/s you purchased.
- 9.3. PSHB.co.za's obligations to you in relation to the purchase of a Service will be fulfilled once the selected Service Provider makes contact with you.
- 9.4. The provision of the Service that you have purchased by the Service Provider that you selected will be subject to that Service Provider's own terms and conditions of service ("**T&C**"), and by purchasing the Service you agree to be bound by the applicable Service Provider's T&C.
- 9.5. **PSHB.co.za shall have no liability to you or to any third party for any damage, loss or expenses, whether direct, indirect or consequential in nature, arising out of or in connection with the provision by the Service Provider of any Service.**

10. Incorrect Information on the Website

- 10.1. We will make all reasonable efforts to ensure that the description, availability and purchase price of Services are accurately reflected on the Website.
- 10.2. Should there be any errors of whatsoever nature on the Website, we will:
 - 10.2.1. permit you to cancel any order for Service/s in respect of which erroneous information was displayed; and
 - 10.2.2. refund you for the purchase price paid for such Services,but **PSHB.co.za will not be liable to you for any other loss, damage, claim or expense arising out of any errors on the Website.**

11. Cancellation of Service

- 11.1. If for any reason you wish to cancel any Service that you have purchased via the Website, prior to the Service having been provided, you may do so by contacting us at info@pshb.co.za.
- 11.2. If you cancel the Service more than 48 hours before it is due to be provided, we will refund you the full price that you paid for such Service, within 14 (fourteen) days after the cancellation.
- 11.3. If you cancel the Service 48 hours or less before it is due to be provided, we will refund you the full price that you paid for such Service, less a 10% late-cancellation fee, within 14 (fourteen) days after the cancellation.
- 11.4. Please note that we only refund to the payment method that you originally used – i.e. payment by credit card will be refunded to the same credit card, and payment by EFT will be refunded to your nominated bank account.

12. Privacy policy

- 12.1. We will take reasonable measures to protect your privacy, as more fully detailed below. In order to purchase Services offered on the Website, you will be required to provide us with some personal information which includes but is not limited to:
 - 12.1.1. your name and surname;
 - 12.1.2. your email address;
 - 12.1.3. your mobile number; and
 - 12.1.4. your physical address.
- 12.2. If you elect to register on the Website so that your details may be stored for future use, you may be required to provide us with additional personal information.
- 12.3. Should you have registered on the Website, and your personal information has changed, it is your responsibility to notify us as soon as reasonably possible to enable us to update your personal information.
- 12.4. By using the Website, you undertake to provide accurate and current information, and not to impersonate or misrepresent any person or entity or falsely state or otherwise misrepresent your affiliation with anyone or anything.
- 12.5. Subject to clause 10.6 below, we will not, without your express consent:
 - 12.5.1. use your personal information for any purpose other than as set out below:
 - 12.5.2. in relation to the purchase and provision of the Services;
 - 12.5.3. to contact you regarding current or new Services offered by us (unless you have opted out from receiving marketing material from us);
 - 12.5.4. to improve your experience on the Website by, for example, monitoring your browsing habits, or tracking your sales on the Website;

- 12.5.5. disclose your personal information to any third party other than as set out below:
 - 12.5.5.1. to our employees and/or third party service providers (including the Service Providers) who assist us to interact with you via our Website, email or any other method, for the purchase and provision of Services, and who need to know your personal information in order to assist us to communicate with you properly and efficiently;
 - 12.5.5.2. to law enforcement, government officials, fraud detection agencies or other third parties when we believe in good faith that the disclosure of personal information is necessary to prevent physical harm or financial loss, to report or support the investigation into suspected illegal activity, or to investigate violations of these Terms and Conditions;
 - 12.5.5.3. to our service providers (under contract with us) who help with parts of our business operations (fraud prevention, marketing, technology services etc), but we will make it clear to these service providers that they may only use your information in connection with the services they perform for us and not for their own benefit.
- 12.6. We are entitled to use or disclose your personal information if such use or disclosure is required in order to comply with any applicable law, subpoena, order of court or legal process served on us, or to protect and defend our rights or property. In the event of a fraudulent online payment, PSHB.co.za is entitled to disclose relevant personal information for criminal investigation purposes or in line with any other legal obligation for disclosure of the personal information which may be required of it.
- 12.7. We will:
 - 12.7.1. treat your personal information as strictly confidential, save where we are entitled to share it as set out in this policy;
 - 12.7.2. take appropriate technical and organisational measures to ensure that your personal information is kept secure and is protected against unauthorised or unlawful processing, accidental loss, destruction or damage, alteration, disclosure or access;
 - 12.7.3. provide you with access to your personal information to view and/or update personal details;
 - 12.7.4. promptly notify you if we become aware of any unauthorised use, disclosure or processing of your personal information; and
 - 12.7.5. upon your request, promptly return or destroy any and all of your personal information in our possession or control, save for that which we are legally obliged to retain.

- 12.8. We will not retain your personal information longer than the period for which it was originally needed, unless we are required by law to do so, or you consent to us retaining such information for a longer period.
- 12.9. **PSHB.co.za undertakes never to sell or make your personal information available to any third party other than as provided for in this policy.**
- 12.10. **Whilst we will do all things reasonably necessary to protect your rights of privacy, we cannot guarantee or accept any liability whatsoever for unauthorised or unlawful disclosures of your personal information, whilst in our possession, made by third parties who are not subject to our control, unless such disclosure is as a result of our gross negligence.**
- 12.11. **If you disclose your personal information to a third party, such as a Service Provider, we will not be liable for any loss or damage, howsoever arising, suffered by you as a result of the disclosure of such information to the third party. This is because we do not regulate or control how that third party uses your personal information. You should always ensure that you read the privacy policy of any third party.**
- 12.12. Our Website uses cookies. Cookies are files containing information that a website transfers to your computer's hard disk for record keeping purposes. Cookies do not, in themselves, personally identify users, but they may identify a user's browser. The Website uses cookies to make your use of the Website as useful and efficient as possible. Cookies are also useful to us, because they allow us to estimate the number of users of our Website and determine traffic patterns on our Website.
- 12.13. If you do not want information collected through the use of cookies, there is a simple procedure in most browsers that allows you to deny or accept the cookie feature. **If you do not disable "cookies", you are deemed to consent to our use of any personal information collected using those cookies, subject to the provisions of this clause 10.**

13. Changes to these Terms and Conditions

- 13.1. PSHB.co.za may, in its sole discretion, change any of these Terms and Conditions at any time, without notifying you. It is your responsibility to regularly check the Terms and Conditions and make sure that you are satisfied with the changes. If you are not satisfied, you must not place any further orders on, or in any other way use, the Website.
- 13.2. Any change to the Terms and Conditions will only apply to your use of this Website and any purchase of Services made, after the change is displayed on the Website. If you use the Website after such amended Terms and Conditions have been displayed on the Website, you will be deemed to have accepted the changes.

14. Electronic communications

When you visit the Website or send emails to us, you consent to receiving communications from us electronically in accordance with our privacy policy as set out in clause 9 above.

15. Ownership and copyright

- 15.1. The contents of the Website, including any information, software, text, graphics, lay-outs, images, logos, trade-marks and/or designs which are displayed on or incorporated in the Website ("**Website Content**") is the property of PSHB.co.za and/or is licensed to

PSHB.co.za, and you will not acquire any right, title or interest in or to the Website or the Website Content.

- 15.2. You may not in any way display, publish, copy, print, post, distribute, reproduce or otherwise use the Website Content unless PSHB.co.za has given its prior written consent, or unless provided for in law. To obtain permission for the use of any Website Content contact us at info@pshb.co.za.

16. Limitation of Liability

- 16.1. **PSHB.co.za shall not be liable for any direct, indirect, incidental, special or consequential loss or damages which might arise from your use of, or reliance upon, the Website or the content contained in the Website; or your inability to use the Website, and/or unlawful activity on the Website and/or any linked third party website.**
- 16.2. **You hereby indemnify PSHB.co.za against any loss, claim or damage which may be suffered by yourself or any third party arising in any way from your use of this Website and/or any linked third party website.**

17. Availability and Termination

- 17.1. **We may in our sole discretion terminate, suspend and/or modify the Website, with or without notice to you. You agree that PSHB.co.za will not be liable to you in the event that it chooses to suspend, modify or terminate this Website other than for processing any orders made by you prior to such time, to the extent possible.**
- 17.2. **If you fail to comply with your obligations under these Terms and Conditions, including in relation to payment of the price for any Services ordered, we will be entitled, with or without notice to you, to suspend and/or terminate your access to the Website, without prejudice to any claims for damages or otherwise that we may have against you.**
- 17.3. **PSHB.co.za is entitled, for purposes of preventing suspected fraud and/or where it suspects that you are abusing the Website, to blacklist you on its database (including suspending or terminating your access to the Website), refuse to accept or process payment on any order, and/or to cancel any order concluded between you and PSHB.co.za, in whole or in part, on notice to you. PSHB.co.za shall only be liable to refund monies already paid by you, and accepts no other liability which may arise as a result of such blacklisting and/or refusal to process any order.**
- 17.4. You can choose to stop using the Website at any time, with or without notice to PSHB.co.za.

18. Treatment Disclaimer

- 18.1. There can be no guarantee around the outcomes of treatments that are applied to trees that have been infested by PSHB. There is no proven treatment that can cure a tree from PSHB. Each tree needs to have its health evaluated, and appropriate treatments applied in accordance with what could benefit the tree. Whilst a tree's ability to resist PSHB can be bolstered by improving its natural health, the outcomes cannot be pre-determined. The application of any product that can repel or kill the PSHB, or impact the fungus that the PSHB feed on, need to be utilised in accordance with its registered instruction.

19. Governing law and jurisdiction

- 19.1. These Terms and Conditions and our relationship and/or any dispute arising from or in connection with these Terms and Conditions shall be governed and interpreted in accordance with the laws of the Republic of South Africa.
- 19.2. In the event of any dispute arising between you and PSHB.co.za, you hereby consent to the non-exclusive jurisdiction of the South Gauteng High Court, notwithstanding that the quantum in the action or proceedings may otherwise fall below the monetary jurisdiction of that court.
- 19.3. Nothing in this clause 16 or the rest of the Terms and Conditions limits your right to approach any court, tribunal or forum of competent jurisdiction in terms of the CPA.

20. Notices

- 20.1. PSHB.co.za hereby selects 138 West Street, Sandown, Sandton, Johannesburg, 2031 as its address for the service of all formal notices and legal processes in connection with these Terms and Conditions (“**legal address**”). We may change this address from time to time by updating these Terms and Conditions.
- 20.2. You hereby select the physical address specified with your order as your legal address, but you may change it to any other physical address by giving us not less than 7 days’ notice in writing.
- 20.3. Notices must be sent either by hand, prepaid registered post, telefax or email and must be in English. All notices sent:
 - 20.3.1. by hand will be deemed to have been received on the date of delivery;
 - 20.3.2. by prepaid registered post, will be deemed to have been received 10 days after the date of posting; and
 - 20.3.3. by email will be deemed to have been received on the 1st (first) working day after the date of successful transmission. For the purposes of this clause, ‘working day’ means any day that is not a Saturday, Sunday or officially recognised South African public holiday.

21. General

- 21.1. You may not cede, assign or otherwise transfer your rights and obligations in terms of these Terms and Conditions to any third party. We may transfer, sub-contract or otherwise deal with our rights and/or obligations under these terms of use without notifying you or obtaining your consent.
- 21.2. Any failure on the part of you or PSHB.co.za to enforce any right in terms hereof shall not constitute a waiver of that right, and shall not prejudice or preclude the future exercise of such right.
- 21.3. If any term or condition contained herein is declared invalid, the remaining terms and conditions will remain in full force and effect.

- 21.4. No variation, addition, deletion, or agreed cancellation of the Terms and Conditions will be of any force or effect unless in writing and accepted by or on behalf of the parties hereto.
- 21.5. These Terms and Conditions contain the whole agreement between you and PSHB.co.za and no other warranty or undertaking is valid, unless contained in this document between the parties.

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