

TERMS AND CONDITIONS  
of  
Frey's Food Brands Proprietary Limited  
Registration Number: 2004/029849/07  
("FFB")

Important Notice: All product supplied to the Customer by FFB ("**Product**") shall be supplied subject to the provisions set out in these Terms and Conditions. The Customer may not substitute its own terms and conditions in place of these Terms and Conditions, and any statement purporting to bind FFB to the Customer's terms and conditions or any other provisions shall be void and unenforceable unless and until the necessary agreement recording same has been signed by the finance manager or a director of FFB. (In this Agreement, "**Customer**" means the entity whose details are set out the Customer Information Schedule and/or the entity that places an order for Product with FFB whether in writing or orally and/or the entity to whom a proforma invoice or quotation is addressed, together with its successors in title, administrators and assigns)

1. DURATION OF THIS AGREEMENT

- 1.1 The agreement between FFB and the Customer (comprised of these Terms and Conditions and all terms recorded in the Customer Information Schedule, and referred to as the "**Agreement**") shall commence on the date upon which the Customer first places an order with FFB or the date upon which FFB communicates its approval of the application for credit by the Customer, if applicable, whichever is the earlier date.
- 1.2 It is recorded that either the Customer or FFB (the "**Parties**") may terminate this Agreement on twenty Business Days' notice to the other Party, unless terminated earlier in accordance with the terms of this Agreement. (In this Agreement the term "**Business Days**" means any day of the month, to the exclusion of Saturdays, Sundays and public holidays in South Africa.)
- 1.3 FFB reserves the right to amend these Terms and Conditions from time to time, which amended terms shall automatically substitute these Terms and Conditions. FFB shall give written notice to the Customer of such amendments.

2. PAYMENT

- 2.1 Unless otherwise agreed in writing by FFB, the price of the Product shall be the usual price charged by FFB at the time an order is placed by the Customer.
- 2.2 Unless otherwise agreed by the Parties in writing, all amounts payable to FFB for Product shall be paid in advance of delivery thereof
- 2.3 All amounts due by the Customer to FFB shall be paid, in full, without deduction, demand or set-off, directly into FFB's bank account, as nominated by FFB, from time to time in writing.
- 2.4 All discounts and/or rebates offered in writing by FFB to the Customer, are conditional upon and subject to the Customer making payment of the amounts due to FFB by the due date. Any failure by the Customer to make payments of amounts due at the due date will result in the discounts and/or rebates lapsing and not being applicable.
- 2.5 FFB shall be entitled to charge interest on any sums outstanding after due date at the prime overdraft rate charged by Nedbank in respect of unsecured accounts, calculated annual, compounded monthly in arrest from the due date until the actual date of payment.

3. ORDERS

- 3.1 When the Customer requires Product, it shall place a written order to this effect with FFB at least five Business Days prior to the date on which it requires the Product.
- 3.2 The order shall only be effective once FFB has accepted such order in writing, however, delivery of the product shall constitute acceptance by FFB.
- 3.3 FFB has the sole and absolute discretion whether or not to accept an order from the Customer.
- 3.4 The Customer shall comply with all reasonable protocols and procedures dictated by FFB relating to the placement of orders.
- 3.5 Unless agreed by FFB in writing, all Product sold to the Customer shall be re-sold for consumption within South Africa.
- 3.6 The acceptance of an order shall constitute the conclusion of a binding agreement in respect of the Product referred to in such order, on the terms set out in this agreement. In the event of any conflict between any of the terms and conditions of this agreement and those set out in an order, the terms and conditions of this agreement shall prevail.

4. EXPORT ORDERS

- 4.1 Unless agreed in writing to the contrary, all orders destined for an address outside the Republic of South Africa are sold by FFB on an "EX-WORKS" basis.
- 4.2 If FFB agrees to sell Product on the basis that it shall obtain and maintain export licenses and consents required to fulfil such orders, FFB shall be entitled to claim any costs which it incurs in obtaining such export licenses and consents from the Customer. It shall be the Customer's responsibility to obtain and

maintain the necessary import permit and authorisations required to import Product to such Destination Country in each instance.

- 4.3 The Customer shall be liable for all costs incurred and damages suffered by FFB as a result of the Customer not being in possession of the aforesaid import permits or authorisations.

## 5. DELIVERY, OWNERSHIP AND RISK

- 5.1 Product shall be delivered when it is loaded onto a vehicle collecting the Product for the Customer (by the Customer or the Customer's agent) from FFB's premises or the premises of FFB's agent or, if applicable, when the Product is off-loaded at the delivery address specified in the Customer's order, after having been transported there by FFB or its agent. Notwithstanding anything to the contrary stated in this Agreement, delivery of Product shall be deemed to have taken place once a delivery note in respect thereto is signed by or on behalf of the Customer.

- 5.2 Where FFB has agreed to deliver the Product to a delivery address specified in the order:

- 5.2.1 FFB shall be entitled to raise a delivery fee to cover the costs of transportation to the delivery address.

- 5.2.2 If, for whatever reason, the Product cannot be delivered at the delivery address, through no fault of FFB ("**Failed Delivery**"), the Customer shall be liable for all additional costs associated with such Failed Delivery, including the costs of storing the Product and delivering same at a later date.

- 5.2.3 The Customer shall off-load the Product or cause it to be off-loaded from the vehicle transporting same to the delivery address within two hours of the vehicle's arrival at the delivery address, failing which the Customer shall be responsible for demurrage charges and any other costs arising from delayed delivery.

- 5.3 Delivery dates and times are estimates only and whilst FFB shall use its reasonable endeavours to deliver on the requested dates and times, FFB shall not be responsible for any losses or damages of any nature whatsoever suffered by the Customer should delivery not be made on the requested date or time.

- 5.4 Risk and ownership in and to Product shall pass from FFB to the Customer upon delivery.

- 5.5 In the event that any Product is delivered to a Customer, which Product is defective, or not to specification or which does not comprise of the Product ordered by the Customer ("**Non-Conforming Product**"), then the Customer shall, within twenty-four hours of delivery, notify FFB in writing thereof and permit FFB or its duly authorised representative an opportunity to inspect such Non-Conforming Product within the three Business Days following such written notification.

- 5.6 Where it occurs that the Customer's complaint is valid, then: -

- 5.6.1 FFB shall collect the Non-Conforming Product from an address as is agreed between the Parties in writing, and replace such Non-Conforming Product with Product which conforms to the Customer's duly accepted order, save that FFB shall not be obliged to collect the Non-Conforming Product from an address which is more distant than the address at which delivery of such Non-Conforming Product originally took place;

- 5.6.2 Subject to clause 5.6.1 above, the cost of collecting the Non-Conforming Product and replacing same, with Product which conforms to the Customer's duly accepted order, shall be borne by FFB;

- 5.6.3 If, after meaningful and good faith engagement, the Parties are not able to agree an address for collection of the Non-Conforming Product by FFB, FFB shall refund the Customer in respect of the Non-Conforming Product;

- 5.6.4 the Customer shall have no claim of any nature against FFB, including but not limited to damages or losses in respect of such Non-Conforming Product.

- 5.7 If no written notice is given by the Customer as aforesaid, Product shall be irrevocably deemed to have been received in good order, not to be defective, to conform to specification and to be in compliance with the order of the Customer.

## 6. PALLETS

- 6.1 Where FFB delivers Product using Pallets, the Customer shall provide FFB with its account number with Chep SA Proprietary Limited (or such other Pallet provider) to which Pallets can be transferred. (In this Agreement "**Pallets**" means the wooden and plastic platforms or bases, upon which the Product is stacked for purposes of convenient loading, transportation and offloading)

- 6.2 Where FFB delivers Product using Pallets and the Customer does not have an account with Chep SA Proprietary Limited (or any other Pallet provider) the Customer shall provide FFB with an empty Pallet on a 'one-for-one' exchange basis after each delivery. Pallets exchanged by the Customer shall be in the same or a similar condition to the Pallet supplied by FFB. The Customer is required to notify FFB in writing immediately that a damaged Pallet comes to its attention.

- 6.3 Should the Customer fail to provide FFB with either an account number with its Pallet provider or with an empty Pallet on a 'one-for-one' exchange basis, the Customer shall be liable to pay FFB the replacement cost and/or the rental cost of the Pallet, which amount shall become immediately due and payable on demand.

## 7. PRODUCT RECALL

### 7.1 Voluntary Recall

- 7.1.1 In the event that FFB institutes a recall of any Product supplied by it to the Customer, then the Customer undertakes to implement FFB's recall protocol and to co-operate, in every reasonable respect with FFB in the recall process. All reasonable instructions from FFB may include (but shall not be limited to) directions as to the proper storage and handling of the Product, avoiding cross-contamination in respect of the Product and ensuring that facilities and delivery vehicles where the Product is or was stored is free and clean of any contaminant.
- 7.1.2 Should the Customer fail, neglect or refuse to carry out such reasonable instructions issued by FFB, FFB may carry out the Customer's obligations without first having to place the Customer in breach in terms of clause 11.
- 7.1.3 FFB may recover the costs of carrying out the Customer's obligations, from the Customer, without prejudice to any other remedies which FFB may have against the Customer in respect of its breach of clause 7.1.1. Such costs shall be payable by the Customer to FFB on written demand.

### 7.2 Mandated Recall

- 7.2.1 In the event that a recall is ordered in terms of the CPA or any other legislation or regulation, where the Customer has been informed of the recall by the National Consumer Commission or any other official mandated with safety recalls, the Customer shall immediately notify FFB thereof and also provide the National Consumer Commission or the official with the relevant contact details of FFB to ensure rapid compliance with the ordered recall.
- 7.2.2 The Customer shall follow FFB's recall protocol, or another recall protocol where the FFB recall protocol has been superseded or amended by instructions from the National Consumer Commission or another body seized with the recall and shall.
- 7.3 In any recall (voluntary or mandated) the Customer shall maintain accurate records of all Product in stock prior to the recall, the amount of Product returned as a result of the recall, as well as any Product which it knows to have been utilised or consumed, which records shall include the batch numbers, use by dates, and accurate descriptions thereof.
- 7.4 Where the Customer intends to on-sell, or has on-sold the Product for further resale or intends to incorporate or has incorporated the Product in another product for resale, it shall incorporate the recall requirements in this clause 7 into any agreement with its customer.

## 8. INTELLECTUAL PROPERTY AND PERMITTED USE

- 8.1 All copyright, patent rights, trademarks, registered design or any application for registration of the same, database rights, design rights, rights in trade, business or domain names, rights in trade dress, rights in inventions, recipes, rights in confidential information and know-how, whether registered or unregistered, or any similar or equivalent rights in any part of the world and all other intellectual property rights in and to the Product shall at all times remain vested in FFB or its licensors.
- 8.2 All confidential information relating to the Product or the business of FFB, including without limitation intellectual property, recipes, ingredients, trade secrets, manufacturing processes and techniques, sales volumes and Product development plans, which is made available, divulged, disclosed or conveyed to the Customer by FFB and/or observed and/or acquired by the Customer, whether directly or indirectly and irrespective of the manner or format in which such information is recorded, held or contained, shall be regarded as secret and confidential by Customer and shall not, in any manner or format, whether directly or indirectly, for reward, or otherwise: -
- 8.2.1 be made available, conveyed, divulged or disclosed by the Customer to any company, corporation, person, firm or other third party of whatever nature or description, anywhere in the world; or
- 8.2.2 be used by the Customer for any purpose, anywhere in the world without the prior written consent of FFB first being had and obtained, which consent FFB shall have the absolute right to withhold.

## 9. LIMITATION OF LIABILITY AND INDEMNITIES

- 9.1 Notwithstanding anything to the contrary contain in this Agreement, the Customer shall have no claim against FFB for any loss or damages, of any nature, occasioned by any defect in any Product supplied, or any failure to provide adequate instructions in respect of any hazards that might arise from the use or incorrect use of the Product, save to the extent that FFB is necessarily liable for such loss or damages in terms of the Consumer Protection Act ("CPA").
- 9.2 FFB shall not be liable for any damages to Product caused by improper or inadequate storage, improper handling, tampering with such Product by parties not authorised thereto by FFB; any negligence of the Customer or a third party in the use, handling and/or storage of the Product; and/or the use of the Product by the Customer or any third party in applications for which they are not recommended or intended, save to the extent that FFB is necessarily liable for such loss or damage in terms of the CPA to the extent that it is applicable. The Customer hereby indemnifies and holds FFB harmless to the full extent allowed in law against all or any claims by any person for any damages, real or alleged, as contemplated in this clause 9.2.

- 9.3 FFB shall not, under any circumstances, be liable for any indirect or consequential losses or damages suffered by the Customer in the purchase, storage, sale, distribution or use of the Product, including without limitation claims for loss of profit, save to the extent that FFB is necessarily liable for such loss or damages in terms of the CPA.
- 9.4 The Parties agree that notwithstanding anything to the contrary contained in the Agreement, the total cumulative amount of any and all claims, which the Customer may have against FFB arising out of this Agreement, shall be limited to an amount not exceeding the market price of the Product in respect of which the liability arises except to the extent that such limitation may be construed as unlawfully infringing the CPA.
- 9.5 Subject to the provisions of the CPA to the extent that it applies, in addition to any other indemnities provided by the Customer in favour of FFB in terms of this Agreement, the Customer indemnifies and holds FFB harmless against any loss and/or claim for damages howsoever arising (including consequential damages and claims by third parties) that the Customer or any third party may suffer as a result of the Customer breaching any of the provisions of this Agreement and/or breach of any warranty given by the Customer in this Agreement and/ or as a result of the Customer's fraud or wilful default or negligence and/or that of any of the Customer's agents, contractors, directors or employees.
- 9.6 In each instance that any losses or damages may be claimed by the Customer in terms of this Agreement or in law, the Customer shall bear the onus of proving both liability and quantum in respect of any such losses or damages except to the extent that same is contrary to the common law, the CPA or any other statute in force.
- 9.7 No claim of any nature whatsoever and howsoever arising in respect of the Product or in respect of any other damages, loss or any other cause of action whatsoever (except for an indemnity claim which shall be dealt with in terms of clause 9.8) may be brought by the Customer against FFB or any of its directors or employees, unless the Customer:
- 9.7.1 where the claim relates to Non-Conforming Product, has complied with the provisions of clause 5.5 above; and
  - 9.7.2 has given written notice of the claim to FFB, before or at the time of delivery of the Product, or if the damage or loss is not reasonably apparent upon delivery, then within four Business Days of delivery; and
  - 9.7.3 has provided FFB with a fully documented claim setting out the precise nature and quantum of the claim within three months of the written notification referred to above.
- 9.8 The Customer shall notify FFB of any claim which is brought against it in terms of the CPA for any harm and/or losses suffered by any person as soon as it would be reasonably possible for the Customer to do so, acting diligently and with all possible expedition.
- 9.9 In addition to the other indemnities given in terms of this Agreement, the Customer indemnifies and holds FFB harmless against all claims, losses, damages, costs, charges, liabilities, penalties, interest, fines and expenses of whatsoever nature (including the actual laboratory charges and expenses and legal and other professional charges and expenses on an attorney and own client scale on a full indemnity basis), suffered or incurred by FFB including those arising from any negligent, fraudulent or wrongful act or omission or breach of warranty or of this Agreement by the Customer (including any other party in respect of whom the Customer is vicariously liable); except to the extent that the loss, damage, liability, cost or expense is directly and exclusively attributable to the fraud or wilful default or negligence of FFB.
10. **FORCE MAJEURE**  
In the event that FFB is prevented from carrying out any of its obligations in terms of this Agreement, whether as a consequence of an act of God, industrial action of any kind, machinery breakdown, damage to or destruction or contamination of FFB's manufacturing plant, facilities or any part thereof (including but not limited to contamination by *Listeria monocytogenes* and other pathogens which may cause foodborne diseases), fire, riot, civil unrest, war (whether declared or not), power and water outages or shortages, labour disputes, labour strikes, embargos, import or export controls, international trade restrictions, any order by any local or international authority, any Court Order or a requirement of any competent authority (including, inter alia, any new Legislation or any amendments to any existing Legislation coming into operation, at any time, which adversely affect FFB's ability to perform in terms of this Agreement), the outbreak of any disease in humans or animals (whether a notifiable disease or otherwise) and restrictions imposed in consequence thereof, or any other circumstances whatsoever which are not within the reasonable control of FFB (all of which for the purposes of this clause , are referred to as an **"event of force majeure"**), then: -
- 10.1 where such event of force majeure endures for a period in excess of twenty Business Days and/or where performance by FFB is inhibited for a period in excess of twenty Business Days in consequence of the event of force majeure, then either Party shall be entitled to cancel any orders for Product which then remain undelivered; and

- 10.2 to the extent that and for as long as FFB is so prevented from performing its obligations in terms of this Agreement, in consequence of the existence or occurrence of an event of force majeure, FFB shall be excused from performing such obligations; and
- 10.3 the Customer shall have no claim against FFB in respect of any losses or damages it may suffer as a result of such cancellation or the failure of FFB to perform its obligations.
11. BREACH
- 11.1 Notwithstanding anything to the contrary contained in this Agreement, if the Customer does not pay all amounts due to the FFB on or before the due date for payment, then all amounts payable by the Customer to FFB shall become immediately payable without further notice to the Customer and FFB reserves the right to give the Customer two Business Days' notice, via e-mail using the e-mail address in clause 1.6 of the Customer Information Schedule, to make payment of all the amounts due, failing which FFB may institute legal proceedings against the Customer, without prejudice to any of its other rights in terms of this Agreement or in law; and/or FFB may unilaterally suspend the supply of Product to the Customer; and/or FFB may unilaterally cancel this Agreement and any orders accepted by FFB prior to cancellation of this Agreement shall be simultaneously cancelled.
- 11.2 In addition to the provisions of clause 11.1 above, a Party ("**Defaulting Party**") shall be in default if it commits any other breach of any of the terms of this Agreement and fails to remedy same within a period of five Business Days from the date of written notification to that effect from the other Party ("**Aggrieved Party**"); or compromises or attempts to compromise any debt or debts with any of its creditors; or is provisionally or finally sequestrated, liquidated or wound-up or placed under business rescue or curatorship.
- 11.3 Upon the Defaulting Party being in default as contemplated in clause 11.2, or should the Aggrieved Party be otherwise entitled in law, the Aggrieved Party shall, without prejudice to any other rights that it may have at law or in terms of this Agreement be entitled to cancel any agreement (including but not limited to this Agreement) in regard to the supply of any Product or the balance of any Product by FFB to the Customer, the supply of which Product may then be outstanding or incomplete; where the Aggrieved Party is FFB, suspend any and all supply of or access to Product in respect of the Customer; where the Aggrieved Party is FFB, suspend or withdraw any Credit Facilities granted to the Customer on written notice to the Customer; claim specific performance from the Defaulting Party of any or all of the obligations owed by the Defaulting Party to the Aggrieved Party; in any of the instances contemplated in this clause 11.3, claim damages from the Defaulting Party, subject to the terms contained in clause 9.
- 11.4 A certificate issued by the financial manager or any director of FFB, whose authority need not be proved, shall be sufficient proof of the monetary limit of the credit granted by FFB to the Customer and/or indebtedness to FFB for any purpose whatsoever arising including but not limited to any dispute, legal action or application (whether for summary judgement, provisional sentence or for any other relief).
- 11.5 If this Agreement terminates or is cancelled for any reason whatsoever, then, notwithstanding anything to the contrary herein, the full amount then outstanding by either Party to the other Party shall immediately be due and payable.
- 11.6 Should FFB take any steps for the recovery of any amounts due and payable by the Customer, or should FFB take any steps to enforce its rights arising out of this Agreement, the Customer shall be liable for the costs thus incurred, on the scale as between attorney and own client, on a full indemnity basis, including, without limitation, any attorneys' fees, tracing agent's fees, arbitrator's fees, advocates' fees, at the usual rate charged by such attorney, tracing agent, arbitrator or advocate, as well as collection commission or other costs incurred in enforcing its rights under this Agreement and irrespective of whether or not summons has been issued or an application has been launched and whether such proceedings are instituted in a court or by way of arbitration or mediation or in any other forum.
- 11.7 The Customer consents to the jurisdiction of the Magistrate's Court in terms of Section 45 of the Magistrate's Court Act, 32 of 1944 (as amended) in respect of any legal proceedings which FFB may wish to institute against the Customer arising out of this agreement, notwithstanding the fact that the amount or value of FFB's claim might otherwise exceed such jurisdiction. The Customer further agrees that notwithstanding such consent, FFB may at its option institute any such proceedings out of the High Court of South Africa, in which event the Customer consents to the jurisdiction of the High Court of South Africa, KwaZulu Natal Local Division, Durban.
12. DOMICILIUM AND NOTICES
- 12.1 The Customer chooses the physical address reflected in the Customer Information Schedule as its domicilium citandi et executandi ("**domicilium**") for all purposes arising from or pursuant to this Agreement. FFB chooses as its domicilium for all purposes arising from or pursuant to this Agreement, the physical address: The CEO, Frey's Food Brands (Pty) Ltd; 1 Eddie Hagen Drive, Cato Ridge, KwaZulu-Natal.
- 12.2 Each of the Parties shall be entitled, at any time, by written notice to the other Party, to vary:-

- 12.2.1 its physical address which forms part of its domicilium, as set out above, to any other address within the Republic of South Africa which is not a post office box or post restante; and
- 12.2.2 its email address which forms part of its domicilium, as set out above, to any other email address.
- 12.3 Any notice given by any party to the other/s (**"the addressee/s"**) which:-
  - 12.3.1 is delivered by hand during the normal business hours of the addressee at the addressee's domicilium for the time being shall be rebuttably presumed to have been received by the addressee at the time of delivery;
  - 12.3.2 is sent by email during normal business hours of the addressee to the addressee's then current email address shall be rebuttably presumed to have been received by the addressee on the first Business Day following the day on which the email is transmitted.
- 12.4 Despite anything to the contrary in this Agreement, a notice actually received by a party is effective even though it was not sent, or delivered, or sent and delivered to its address or email address or addresses set out on page one.
- 12.5 All notices under this Agreement shall be served in one or more of the ways described in clauses 12.3.1 and/or 12.3.2 above, but not by ordinary or registered post, regardless of the address to which such notices may be posted.

### 13. DATA PROTECTION AND PROCESSING OF PERSONAL INFORMATION

- 13.1 The Customer expressly consents to FFB collecting and processing its Personal Information (as defined in the Protection of Personal Information Act, No. 4 of 2013), including full names and contact details of staff members as well as the Customer's company registration number, VAT number, physical and postal addresses.
- 13.2 The Personal Information shall be collected, processed and stored by FFB for the purpose of
  - 13.2.1 processing orders made by the Customer;
  - 13.2.2 to draw statistics and user reports to identify potential markets and trends;
  - 13.2.3 to determine current and future customer requirements and
  - 13.2.4 to develop new products and services.
- 13.3 The collection, processing and storage of Personal Information shall be done in terms of FFB's Privacy Policy, a copy of which is available to the Customer on written request to FFB.
- 13.4 The provisions of this clause 13 shall be severable from the rest of this Agreement and shall remain in effect despite the termination of or invalidity for any reason of this Agreement.

### 14. DISPUTE RESOLUTION: ARBITRATION

- 14.1 Should any dispute arise between the Parties in connection with this Agreement, either Party may refer the dispute to arbitration, and in that event the Parties hereby consent to the arbitration being dealt with on an urgent basis in terms of the rules of the Association of Arbitrators (Southern Africa) (**"AASA"**).
- 14.2 The arbitration will be held in Durban, KwaZulu-Natal, South Africa.
- 14.3 The arbitrator shall be a practising senior advocate of at least fifteen years standing.
- 14.4 The decision of the arbitrator will be final and binding on the Parties and may be made an order of the High Court at the instance of a Party.
- 14.5 The costs of such arbitration will be borne by the unsuccessful Party or by both the Parties in such proportions as determined by the arbitrator in his sole discretion.
- 14.6 The provisions of this clause 14 shall be severable from the rest of this Agreement and shall remain in effect despite the termination of or invalidity for any reason of this Agreement.
- 14.7 This clause will, regardless of whether a Party to this Agreement has demanded that a dispute be determined in accordance with this clause 14, not preclude any Party from obtaining any relief on an urgent basis from a court of competent jurisdiction, and in respect of recovery of any sum due to FFB, FFB is not precluded from instituting proceedings in a court of competent jurisdiction.
- 14.8 Despite the reference of a dispute to arbitration under this clause 14, the Parties shall continue to perform their obligations under this Agreement.

### 15. INTERPRETATION

In this Agreement:

- 15.1 words referring to natural persons shall also refer to bodies corporate and other legal personae and vice versa;
- 15.2 a reference to any one gender shall include a reference to the other gender;
- 15.3 reference to the singular shall include a reference to the plural and vice versa;
- 15.4 any reference to "writing" in this Agreement shall include emails and facsimiles;
- 15.5 any reference to "signing" or "signature" or "signed" includes electronic signatures;
- 15.6 when any number of days is referred to, the days shall be calculated by excluding the first day and including the last day;
- 15.7 the clause headings are for reference purposes only and shall not affect the interpretation of this Agreement;

- 15.8 the rule of interpretation that an Agreement will be interpreted against the Party responsible for the drafting of the Agreement shall not apply to this Agreement and the Parties waive any rights they have to rely on such rules;
- 15.9 the termination or expiry of this Agreement shall not affect those provisions of this Agreement which either stipulate that they will continue to operate after the Agreement's expiry or termination, or which of necessity must continue to have effect after such expiry or termination, even if the clauses themselves do not expressly provide for this.
- 16 GENERAL
- 16.1 If any provisions of this Agreement are found to be unlawful, unenforceable or invalid generally or in the context of the Agreement with a specific Customer, it shall be deemed to be separate and severable from the remaining provisions of this Agreement and to the extent that same is unlawful, unenforceable or invalid, be deemed to pro non scripto.
- 16.2 No Party shall be bound by any undertakings, representations, warranties and promises or the like not recorded therein or otherwise agreed in writing and signed by the Parties.
- 16.3 Subject to FFB's right to amend these Terms and Conditions in terms of clause 1.3 above, no variation of this Agreement, addition to this Agreement or agreed cancellation of this Agreement shall be of any force or effect unless in writing and signed by both of the Parties.
- 16.4 No extension of time or other indulgences granted by one Party to the other Party in respect of its obligations will constitute a waiver or novation of or otherwise affect any of the first Party's rights to enforce strict compliance with the terms of this Agreement.
- 16.5 The validity, interpretation and all other matters arising out of this Agreement shall be governed by the laws of the Republic of South Africa.
- 16.6 The Customer warrants that it will comply with all laws, including the CPA and common law and will not expose FFB to any liability or claim through its negligence or failure to comply with its legal obligations.
- 16.7 The Customer may not cede or assign any of its rights or delegate any of its obligations under this Agreement without the prior written consent of FFB, which consent may be withheld.
- 16.8 The Customer acknowledges that it has not been induced to sign this Agreement by any representations by FFB or by any third parties and confirms that it enters into this Agreement freely and voluntarily.
- 16.9 Each Party acknowledges that it has been free to secure independent legal and other advice as to the nature and effect of all of the provisions of this Agreement and that it has either taken such independent legal or other advice or dispensed with the necessity of doing so.
- 16.10 The Customer hereby agrees that this Agreement, shall forthwith replace and supersede all previous agreements between the Parties in regard to credit facilities granted to the Customer by FFB, if applicable, and/or the Product supplied by FFB.