



STANDARD SALE TERMS AND CONDITIONS ("T&C")

1. DEFINITIONS AND PRELIMINARY

- 1.1 The following words and phrases shall have the following meanings:
- 1.1.1 **"Acceptance"** means acceptance by the Supplier of any Quotation or Order placed by the Customer on it, which is subject to these T&C (and **"Accepted"** shall have a cognate meaning);
- 1.1.2 **"Agreement"** means a Quotation or Order accepted by the Supplier of the Products to the Customer in accordance with the T&C as set out in this Agreement, Delivery of the Products to the Customer similarly being Acceptance of the T&C as set out in this Agreement;
- 1.1.3 **"Customer"** means the entity or person (if relevant) whose details are set out in the Order/Invoice;
- 1.1.4 **"Delivery"** means delivery of the Products by the Supplier to the Customer (**"Supplier Delivery"**) or delivery of the Products via a third Party (**"Customer's Agent"**) to the Customer (**"Customer Delivery"**);
- 1.1.5 **"Force Majeure Event"** means any act, event, failure to exercise, omission or accident that is beyond the Supplier's reasonable control, including, but not limited to, the following natural disasters or acts of God, civil unrest, revolt, invasion, acts of terrorism (e.g., terrorist attack or terrorist threat), war (declared or not) or threat or preparation for war, labour disputes, strikes, lockout, other forms of protest or stoppages, acts, decrees, legislation, regulations or restrictions of any government or public authority, fire, explosion, storm, flood, earthquake, collapse or any other natural disaster, inability to use trains, ships, aircraft, motorized transport or other means of transport, public or private, inability to use public or private telecommunication systems, strike, failure or accident in maritime or river transport, postal transport or any other type of transport, border closures, government shutdowns, trade blockages, embargos, disruptions to

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global trade, and port congestion, epidemics, pandemics, or outbreak of communicable disease, quarantines, lockdowns, national or regional emergencies, or any other cause, whether similar in kind to the aforementioned or otherwise beyond the Supplier's reasonable control;

- 1.1.6 **"Invoice"** means the invoice issued by the Supplier to the Customer for the Products supplied to it in terms of an Order;
- 1.1.7 **"Order"** means the order placed by the Customer upon the Supplier, whether in terms of a Quotation (accepted by the Supplier), or as detailed in an Invoice;
- 1.1.8 **"Parties"** means the Supplier and the Customer, and "Party" shall, in the context, refer to either of them;
- 1.1.9 **"Price"** means the aggregate price payable by a Customer to the Supplier with respect to the aggregate of the Products sold in terms of an Order, as reflected on an Invoice or Statement (and in the context shall refer to the price of each of the Products so supplied);
- 1.1.10 **"Products"** means the products to be supplied by the Supplier to the Customer, which have been imported, blended, or customised, comprising of the Spice & Herbs oleoresins, essential oils, colourants, flavourings, and related products, for use and application in the food industry;
- 1.1.11 **"Quotation"** means a quotation for the supply of Products provided by the Supplier to the Customer, and on Acceptance by the Customer, shall constitute an Order;
- 1.1.12 **"Statement"** means the Supplier's monthly statement indicating the aggregate of the Price payable for the Products supplied to the Customer during the period so reflected;
- 1.1.13 **"Supplier"** means Agro Mills SA Proprietary Limited;
- 1.1.14 **"T&C"** means the Supplier's Standard Terms and Conditions as set out in this Agreement (and Order/Invoice);
- 1.1.15 **"VAT"** means value added tax payable in terms of the Value Added Tax Act No. 89 of 1991, as amended ("the VAT Act");

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1.1.16 “**writing**” means any form of written communication, including the receipt by the addressee of such communication by way of e-mail, facsimile or hand delivery, as the case may be, unless in the context of this Agreement any specific provision requires delivery or transmission of a communication to be effected in a stipulated manner, and “written” shall have a cognate meaning; the provisions of the Electronic Communications and Transactions Act 25 of 2002 are not excluded.

1.2. Unless in the context of this Agreement a contrary intention is indicated:

1.2.1. a reference to the singular shall include the plural and *vice versa*:

1.2.2. a reference to any gender shall include the other gender;

1.2.3. a reference to a juristic person (whether incorporated or unincorporated) shall be to a natural person, and *vice versa*; and

1.2.4. captions to any of the provisions hereof are inserted for convenience, and shall not be used in the interpretation of this Agreement.

1.3 The Customer warrants that its employees and/or officers who negotiated the supply of the Products in terms of the Order, were duly authorised to do so.

1.4 The Supplier makes no warranties regarding the Products, save for any specifications expressly stipulated in the Quotation or Order and as expressly referred to in this Agreement.

1.5 Save as may be expressly indicated on the Order (“**Special Conditions**”), no other terms and conditions are applicable to an Order on Acceptance by the Supplier.

1.6 The provisions of this **section 1** comprise material provisions integral to this Agreement.

2. ACCEPTANCE

2.1 The written confirmation by the Customer of Acceptance of a Quotation shall constitute Acceptance of the Order in respect of the Products to be supplied by the Supplier in terms thereof.

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2.2 Delivery of the Products to the Customer shall similarly constitute Acceptance of the Order, subject to the T&C set out in this Agreement and the Order/Invoice.

3. QUOTATIONS AND ORDERS

3.1 Where a Customer requires a Quotation for the supply of Products, same shall be in writing, and contain sufficient specificity as to the quantities, the specifications (where applicable), and indicate any Special Conditions relating to packaging and Delivery time/s.

3.2 Any variations to the Quotation must be in writing.

3.3 The Acceptance of the Quotation by the Customer must be in writing, and it is the Customer's responsibility to ensure that the Invoice correctly reflects the details of the Order as constituted on Acceptance of the Quotation.

3.4 Similarly, an Order placed by a Customer on the Supplier and Accepted by it, shall be confirmed by the Supplier in writing, and it is similarly the Customer's responsibility to ensure that the Invoice received with respect to such Accepted Order correctly reflects the details of the Order in all respects.

3.5 Any variations to an Order, including the required supply of any additional Products, or any changes with regard to the Products initially the subject the Order, shall similarly require to be confirmed and Accepted by the Supplier; similarly, if for reasons beyond the control of the Supplier, it is unable to supply any Product, the subject of the Order, or the quantities of any Product, the subject of the Order, it shall promptly inform the Customer and, in the circumstances referred to, issue an amended Order or Invoice, as the case may be.

3.6 In the event of a Customer wishing to terminate an Order or the supply of any particular Products in terms of such Order, the Supplier shall in its discretion be entitled to Accept or reject such termination either wholly or selectively, e.g. where it has created a blend of Products specifically for the Customer.

3.7 This agreement will apply to all orders place on the supplier and accepted by it.

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4. Delivery

- 4.1 The Supplier will use its best commercial endeavours to effect Delivery of the Products in terms of an Order with all due expedition, time not being deemed to be of the essence unless in terms of the Special Conditions as set out in an Accepted Order, Delivery is required to be effected within a specific period or by a specific date.
- 4.2 The Supplier shall effect Delivery to a Customer of Accepted Orders at its cost within RSA (Supplier Delivery).
- 4.3 The Supplier accepts responsibility for Delivery of Orders nationally within the Republic of South Africa, at its cost. If an overnight or special Delivery is required by the Customer, the additional costs payable by the Customer shall be indicated on the Quotation/Order, and shall be for the Customer's account.
- 4.4 Deliveries otherwise than as indicated above shall be at the cost of the Customer (including transport/freight and insurance), the carrier in such circumstances being the Customer Agent of the Customer, and the risk with respect to the Products shall pass to the Customer upon collection of the Products from the Supplier's premises (Customer Delivery).
- 4.5 Where the Supplier affects Delivery it is at risk with respect to the relevant Order until delivered to the Customer.
- 4.6 It is the Customer's responsibility to promptly, on the Delivery having been received by it, to ensure that same is in accordance with the Order, and any damage to the Products or packaging, or short or over deliveries, must be advised, in writing, to the Supplier within 48 (forty eight) hours of receipt (at the Customer's premises) of the Delivery.
- 4.7 The Customer accepts that the Supplier is reliant on materials which are imported from abroad, and accordingly its ability to beneficiate the Products to meet the requirements of the Customer's clients and/or to effect Delivery expeditiously, irrespective as to whether the time for Delivery is of the essence, is dependent on its ability to procure the required raw materials or Products, and accordingly on the occurrence of a Force Majeure Event, the Supplier will use its best commercial endeavours to source other Products, suitable and equivalent raw materials, and to enable it to supply the Products as required in terms of the Order, the Supplier in these circumstances not

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being responsible for its inability to supply any particular Product and/or the late Delivery thereof.

4.8 The Customer shall acknowledge receipt of an Order on the Supplier's transporter's waybill (Delivery note).

5. RETURNS AND CREDITS

5.1 It is the Customer's responsibility to check and ensure that the Products received in terms of a Delivery are compliant with the Order therefor, and shall for purposes of the beneficiation thereof and/or further blending, reselling or otherwise, have implemented such food safety tests and complied with such protocols as are necessary in terms of any food industry and/or other competent authority's standards and requirements (whether applicable in South Africa, or in any other country to which the Customer shall supply its products).

5.2 Any defects in the Products shall accordingly be advised by the Customer to the Supplier in writing, within 5 (five) working days of receipt of a Delivery, failing which the Supplier accepts no responsibility therefor.

5.3 Defective Products advised to the Supplier within the aforementioned 5 (five) working days period, shall be collected by the Supplier at its cost, and either replaced with a compliant Product, or if unavailable, a credit passed in respect thereof in favour of the Customer.

5.4 The provisions relating to defective Products shall similarly apply to any Products as referred to above in **section 4.6** which, on receipt, are found to be non-compliant with the Order, and/or where the packaging has been damaged in transit, and such defects must be notified in writing to the Supplier within 48 (forty eight) hours of Delivery.

5.5 Save as indicated above, the return of any Products to the Supplier for credit shall be in the sole discretion of the Supplier.

6 PRICE AND PAYMENT

6.1 Unless the Customer has been granted a credit facility by the Supplier (and the Customer shall have completed the Supplier's credit application forms),

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Orders shall be supplied solely on the basis that payment in terms of an Order shall be strictly COD.

- 6.2 Unless otherwise expressly agreed in writing between the supplier and the customer, Payment with respect to Orders shall be strictly 30 (thirty) days from date of Statement.
- 6.3 Should the Price not be paid by due date therefor, the Supplier reserves the right to claim and recover interest on any outstanding amounts at the rate of 2% (two percent) per month, calculated from the due date for payment to the date of actual payment, both days inclusive.
- 6.4 All payments shall be effected by electronic funds transfer into the Supplier's bank account, free of exchange, deduction, commission or bank charges, and in South African Rand.
- 6.4 VAT shall be payable with respect to the Price as indicated on the Invoice.
- 6.5 The Supplier shall provide the Customer with a Statement setting out details of the Invoices generated during the affected month, and indicating, as referred to in section 6.2, whether payment is due within 30 (thirty) days, or 60 (sixty) days from date of such Statement.
- 6.6 Any credits due to the Customer in accordance with the provisions of this Agreement shall be duly reflected on a Statement.
- 6.8 The Invoices and Statements shall reflect both Parties' VAT registration numbers.
- 6.7 The Supplier accepts no responsibility for payments which are not made to the Supplier's bank account, and Customers should confirm the Supplier's bank account details with the Supplier's accountant. Customers are alerted to the risk of cyber intercepts. The Supplier accordingly accepts no responsibility for any payments made by the Customer to any account other than its stated bank account.
- 6.8 Ownership in the Products remains vested in the Supplier until all amounts due with respect to the Payment and other charges, if applicable, as referred to in this section 6, have been paid to the Supplier.

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7 PRODUCTS

- 7.1 The Customer shall ensure that in terms of any Quotation or Order, it states with specificity the Products, including, where relevant, the specifications, the quantities, and where relevant any special packaging required.
- 7.2 Where any specific packaging is required, other than the Supplier's standard packaging, the Price shall reflect the costs of providing any bespoke packaging to meet the Customer's requirements.
- 7.3 The Supplier shall ensure that the Product meet with the Customer's requirements and specifications.
- 7.4 It shall be incumbent upon the Customer, having regard to its blending, on-selling, reselling of the Products, in addition to its obligations as set out in section 5.1 above, to ensure that it holds adequate product liability insurance, the obligations of the Supplier being limited to the supply of the Products, the subject of the Order, to the Customer in terms of the Order/Invoice, and the T&C.
- 7.5 All intellectual property rights relating to any of the Products specifically formulated (blended or mixed) for the Customer, remain vested in the Supplier, which the Customer recognises and the Customer shall not directly or indirectly infringe upon such rights.

8 WARRANTIES, CUSTOMER'S ACKNOWLEDGEMENT, LIABILITIES AND INDEMNITIES

- 8.1 The Supplier warrants that it has the necessary experience, ability, and facilities to supply the Products in a proficient manner, in accordance with all applicable laws.
- 8.2 Save for the warranties herein provided, and that the Products, the subject of the Order, will be delivered in compliance therewith, the Supplier provides the Customer with no other warranties or representations, nor shall it be responsible for any claims, losses or damages suffered by the Customer in terms of its

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beneficiation and resupply of the Products as delivered or as benefited by the Customer, for the end users or its clients.

8.3 The Customer accordingly indemnifies the Supplier, its directors, officers, and employees, in respect of any claims, losses or damage (including interest and legal costs), howsoever arising, whether in respect of any injury or other harm to any person and/or damage to property, arising from the Products, after Delivery to the Customer, these indemnities extending to any claim by any third party to whom the Customer has on-supplied the Products or any combination thereof.

9 BREACH

9.1 Subject to any other rights or remedies expressly referred to in this Agreement, should either Party commit a breach of any provision of this Agreement and fail to remedy such breach within 7 (seven) days after receipt of a written notice from the aggrieved Party containing a suitably detailed demand with regard to the breach to be remedied, the aggrieved Party shall be entitled to either cancel this Agreement, alternatively claim and enforce specific performance, without, in either event, derogating from the aggrieved Party's right to claim and recover from the defaulting Party such damages sustained in consequence of such breach and/or cancellation, but expressly excluding any remote and consequential damages.

9.2 Notwithstanding any demand or cancellation, the rights of both Parties which accrued prior thereto are strictly reserved.

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10 DOMICILIA AND NOTICES

- 10.1 All Orders, Invoices, and other written communications between the Parties shall either be delivered by hand or by email transmission to the physical address or email address as set out in an Order or Invoice.
- 10.2 Any change of physical address or Customer’s address for Delivery, or email address/es, or contact numbers (landline or cell number) shall be conveyed in writing to the other Party, such changes to be effective within 2 (two) working days after receipt of such written notice.
- 10.3 The transmission of Quotations, Invoices, Orders, Statements, and any other written communications as transmitted by email shall be deemed to be received on the ensuing working day.
- 10.4 Notwithstanding anything to the contrary stated above, if a notice or communication is actually received by a Party, adequate notice or communication shall have been given, even though it was not delivered in a manner described above.
- 10.5 Due to the dysfunctional state of the South African Postal Service, delivery by post or prepaid registered mail is not permitted.
- 10.6 Any legal process may be served at the Party’s physical address, or by email.

11 MISCELLANEOUS

11.1 Variation:

no amendment, addition to, deletion, suspension, waiver or consensual cancellation of any provision of this Agreement shall be of any force or effect unless in writing and signed by the Parties.

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11.2 Law and jurisdiction:

11.2.1 this Agreement shall be construed, applied and governed in accordance with the laws of the Republic of South Africa;

11.2.2 the Parties agree to the jurisdiction of the Magistrates' Court (notwithstanding that the amount of any claim exceeds the jurisdiction of such Court) and where the particular Magistrates' Court has jurisdiction over the Party or Parties, as the case may be, and without such submission to jurisdiction of the Magistrates' Court preventing either party from instituting any proceedings in a Court of competent jurisdiction.

11.3 Provisions:

all the provisions, terms, conditions, undertakings, covenants, obligations, rights and the like as are imposed or conferred under this Agreement are, for convenience, referred to as "provisions" and all the provisions, or parts thereof, are severable and divisible and should any provision, or part thereof, be found by a competent Court to be invalid and/or unenforceable, such a finding shall, subject to the order of such Court, not affect the validity and/or enforceability of the remaining provisions, or parts thereof.

11.4 Indulgences:

no indulgence, including any extension of time or relaxation, which either Party (the Grantor) may show or allow the other Party (the Grantee) shall constitute a waiver or precedent, nor found any claim or defense based on the principles of novation or estoppel, and any such indulgence, extension of time or relaxation shall be interpreted as applicable solely to the matter in respect of which it was shown or granted, the Grantor being entitled, notwithstanding any such previously shown or

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granted indulgence, extension of time or relaxation to demand strict and punctual compliance by the Grantee with all his or her obligations in terms of this Agreement.

11.5 Restrictions:

the Customer shall not be entitled to cede, assign, or otherwise make over or delegate any of its rights or obligations under this Agreement without the prior written consents of the Supplier.

11.6 Succession:

this Agreement shall be binding upon the Parties, their lawful successors-in-title, administrators and permitted assigns.

11.7 Entire Agreement:

this Agreement constitute the sole Agreement between the Parties with respect to all Quotations, Orders, Invoices, and Statements relating to the supply by the Supplier of Products to the Customer, and no other terms and conditions, unless in writing, and accepted by or on behalf of the Parties, shall be of any force or effect.

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