

(Version Oct 2019)

STANDARD TERMS AND CONDITIONS OF SALE OF FRUITION (PTY) LTD

RECORDAL: The Parties agree that these Terms and Conditions shall apply to all written and verbal communications and transactions between FRUITION and the CUSTOMER relating to the provision of Services and/or Supply of GOODS by FRUITION to the CUSTOMER, whether on a Cash on Demand ("COD") basis, or on such Credit Terms as may be extended by FRUITION in its sole and absolute discretion. The CUSTOMER's own conditions of purchase shall not supersede these conditions of sale and the CUSTOMER hereby irrevocably accepts these terms and conditions.

1. DEFINITIONS:

- 1.1 Unless the context clearly indicates the contrary, the following words, phrases and expressions shall have the respective meanings assigned to each of them hereunder:
- 1.1.1 The "**AGREEMENT**" means these Standard Terms and Conditions of Sale.
- 1.1.2 "**BUSINESS DAY**" means any day other than a Saturday, Sunday or Public Holiday in the Republic of South Africa.
- 1.1.3 The "**CUSTOMER**" means [REDACTED];
RSA Company Registration Number: [REDACTED].
- 1.1.4 **FRUITION** " means **FRUITION (PTY) LTD**; RSA Company Registration 2007/032812/07.
- 1.1.5 The "**GOODS**" means any services rendered by FRUITION to the CUSTOMER, and/or the finished product/s supplied by FRUITION to the CUSTOMER in accordance with the specifications agreed between the Parties.
- 1.1.6 "**PACKAGING MATERIALS**" shall mean the materials approved and signed-off by the CUSTOMER which FRUITION will use to package the GOODS.
- 1.1.7 "**PARTY**" or "**PARTIES**" shall mean either FRUITION or the CUSTOMER individually or collectively.
- 1.1.8 The "**SPECIFICATIONS**" shall mean the formulae/recipe composition including the shelf-life of the GOODS; approved by the CUSTOMER for use by FRUITION in the production of the GOODS, and which shall be signed-off by the PARTIES before production can commence.

2. ACCOUNT APPLICATION:

2.1 **Application for Credit Agreement:**

- 2.1.1 The CUSTOMER consents to FRUITION making enquiries into the CUSTOMER's credit record with any credit reference agency or any other party to confirm the details on the credit application. FRUITION warrants that the information obtained will be kept confidential and will not be used for any unauthorised purpose, save that the CUSTOMER consents to FRUITION disclosing details to enquiring credit bureaus or other creditors of the CUSTOMER on how the CUSTOMER has discharged its obligations in terms of its agreement with FRUITION.
- 2.1.2 FRUITION reserves the right to increase, decrease or otherwise alter, suspend or withdraw the credit limit in terms of the credit amount granted to the CUSTOMER, at its sole discretion and at any time.

2.2 **Cash on Demand ("COD") Account:**

- 2.2.1 Should the application for a credit account be refused, FRUITION will automatically create a COD account for the CUSTOMER.
- 2.2.2 Where the CUSTOMER operates under a COD account, the CUSTOMER undertakes to pay for the GOODS and Services provided by FRUITION in cash, in full, and in advance upon receipt of an order from the CUSTOMER, or an invoice from FRUITION, relating to the transaction as agreed to by FRUITION.

3. ORDERS & FORECASTS:

- 3.1 The CUSTOMER shall place written orders by forwarding it to orders@fruition.co.za Orders placed shall be irrevocable upon receipt thereof by FRUITION. FRUITION may, in its sole discretion, accept verbal orders but accept no responsibility for any errors or misunderstandings occasioned by the CUSTOMER'S failure to make orders in writing. The CUSTOMER shall provide an order number irrespective whether a written or oral order is placed.

- 3.2 Any order of which receipt has been confirmed by FRUITION shall be deemed to be firm and may only be modified, rescinded or cancelled, in whole or in part, upon the written agreement of FRUITION.
- 3.3 In the event of any order being given to FRUITION on an order form reflecting the CUSTOMER'S name as the entity from which the order emanates, such order shall be deemed to have emanated from the CUSTOMER, notwithstanding the fact that such order may have been given or signed by a person not authorised by the CUSTOMER and such order will be deemed to constitute valid delivery.
- 3.4 The CUSTOMER shall provide FRUITION with FIRM volume forecasts where FRUITION needs to acquire Raw and Packaging Materials that can only be used in the production and/or packaging of Products for and on behalf of the CUSTOMER. The CUSTOMER undertakes to place sufficient orders to utilise all of the materials during the forecasted period in the production of the Products. The CUSTOMER will be liable to refund FRUITION the cost of materials specifically ordered but not fully used during the applicable forecast period.

4. PRICE:

- 4.1 Prices quoted as ex works and exclude VAT and all other charges unless otherwise stated.
- 4.2 Only written quotations shall be binding upon FRUITION and all written quotations shall lapse if an order is not placed by the CUSTOMER within the time specified or within 21 Business Days if no time is specified.
- 4.3 Notwithstanding anything else contained herein, FRUITION shall be entitled to increase the price of the GOODS during the currency of this agreement should the cost to FRUITION to manufacture the GOODS increase including, but not limited to, increases in the costs to FRUITION of labour, materials, freight, import duty rates and exchange rates. Reasonable notice of will be given by FRUITION.
- 4.4 **ADDITIONAL COSTS:**
- 4.4.1 By agreement the CUSTOMER shall be liable for FRUITION's actual costs of conveying the GOODS from FRUITION's works to any place nominated by the CUSTOMER.
- 4.4.2 FRUITION shall be entitled to recover from the CUSTOMER the costs of any packaging materials; raw materials; or any other item specifically ordered on behalf of the CUSTOMER.
- 4.4.3 The CUSTOMER shall bear any additional costs to FRUITION arising from alterations, omissions or discrepancies in any specifications or information supplied by the CUSTOMER to FRUITION.

5. CREDIT TERMS; INVOICING and PAYMENT

- 5.1 Payment for the GOODS, transport costs, and any additional charges shall be made by the CUSTOMER to FRUITION on or before the last Business Day of every calendar month following the calendar month wherein FRUITION's invoice for such GOODS, costs or charges was generated by FRUITION, unless otherwise agreed in writing by FRUITION per e-mail, and/or as noted in a Supply or Contact Packing Agreement issued by FRUITION and as signed-off by the Parties.
- 5.2 FRUITION shall be entitled to generate invoices on the date that the GOODS were tendered for delivery to the CUSTOMER or the date that the transport costs or additional charges were incurred.
- 5.3 If the CUSTOMER should fail to object to any item appearing on FRUITION'S invoice and/or statement of account within Ten (10) Business Days of date of providing the CUSTOMER with the invoice, or the dispatch of the statements, the accounts shall be deemed to be in order. Notwithstanding any dispute between the Parties the CUSTOMER shall not be entitled to refuse, delay or withhold payment or any part thereof.
- 5.4 Payment shall be made without deduction or set-off at the address indicated on the invoice, or directly into FRUITION's nominated bank account. All payments shall be accompanied by details of the makeup of such payments.
- 5.5 The CUSTOMER is liable to pay interest on all overdue payments at a rate equal to 2% above the prevailing prime lending rate from time to time.
- 5.6 FRUITION shall be entitled at its discretion, to appropriate or allocate any payments received from or on behalf of the CUSTOMER, to any indebtedness of the CUSTOMER to FRUITION, from whatsoever other cause arising and the CUSTOMER hereby waives and abandons the right to name the debt to which any payment made to FRUITION shall be allocated.
- 5.7 In the event the CUSTOMER fails to pay in accordance with Clause 5.1 above and no prior arrangements for alternative payment has been made with FRUITION, in such instance FRUITION reserves the right to institute action for the recovery thereof plus interest and costs. A certificate, issued under the hand of a director of FRUITION, shall be prima facie evidence of the amount due and owing by the CUSTOMER and such certificates shall be sufficient for the purposes of summary judgement or provisional sentence.
- 5.8 FRUITION shall, in addition to any other remedies it has, be entitled to refuse to deliver any GOODS or perform any services until any monies due to it has been paid in full by the CUSTOMER.

6. DELIVERY:

- 6.1 Unless otherwise agreed in writing, the CUSTOMER shall accept delivery of the GOODS at FRUITION's works on the date stipulated by FRUITION.

- 6.2 The CUSTOMER agrees that the signature of any agent, contractor, sub-contractor or employee of the CUSTOMER on FRUITION'S official delivery note/invoice/waybill, or the delivery note of an authorised independent carrier, will constitute valid delivery of the GOODS.
- 6.3 FRUITION shall use its best endeavours to have the GOODS available for collection on the stipulated date, but under no circumstances shall FRUITION be liable for any loss, damages, expenses or any loss of profit or any consequential damages suffered by the CUSTOMER arising out of FRUITION's failure to deliver the GOODS timeously or at all.
- 6.4 Late delivery shall not invalidate the agreement and the CUSTOMER is obliged to accept delivery when tendered.
- 6.5 Where FRUITION agrees to a request by the CUSTOMER to postpone delivery of the Products, or in the event of the CUSTOMER failing to give FRUITION sufficient information to enable it to process any order, the CUSTOMER shall pay FRUITION the costs and expenses FRUITION incurred owing to such postponement.
- 6.6 In executing orders made by the CUSTOMER, FRUITION shall be entitled to exceed or deliver less than the quantity ordered by not more than Ten (10%) percent in respect of the quantities ordered, and the CUSTOMER shall be liable to pay for all GOODS so delivered.
- 6.7 Part deliveries may be made by FRUITION unless the CUSTOMER has expressly requested in writing, prior to delivery, that part deliveries not be made.
- 6.8 The CUSTOMER shall be responsible for the off-loading of the GOODS at the destination. FRUITION shall not be held responsible for any damage to the GOODS during transportation and off-loading.
- 7. RISK and RESERVATION OF OWNERSHIP:**
- 7.1 Risk in the GOODS shall pass to the CUSTOMER on delivery which shall in all circumstances be deemed to have been effected upon removal of the GOODS from FRUITION's works.
- 7.2 Ownership in any GOODS sold and delivered to the CUSTOMER in terms of a credit account, shall pass to the CUSTOMER only when all amounts due by the CUSTOMER to FRUITION have been paid.
- 7.3 The CUSTOMER shall at its expense, insure the GOODS and keep them insured against all risks, and for such amount as FRUITION may reasonably require. Should a claim arise under such insurance, the CUSTOMER shall upon receipt of the proceeds of such claim, pay to FRUITION the full proceeds of the claim, up to the balance owing to FRUITION.
- 7.4 The CUSTOMER shall, immediately on the conclusion of this agreement notify the landlord of the premises of the provisions of this clause 5 and that the GOODS are not subject to any landlord's hypothec or any other rights.
- 8. SHORT DELIVERY; DAMAGED AND DEFECTIVE GOODS:**
- 8.1 FRUITION shall not entertain any claim as a result of short delivery or damaged GOODS unless such claim, inclusive of all relevant details, and photograph of damaged GOODS, are submitted to FRUITION in writing within 2 (two) Business Days of the date of delivery.
- 8.2 Product Quality claims will only be considered where it can be proved that these are owing to micro-biological contamination and/or findings of foreign objects that can be traced back to the production process, or where FRUITION, without the consent of the CUSTOMER has produced product outside the signed-off specifications and such industry variance parameters as may be applicable. FRUITION will reference quality related complaints against the retained retention sample/s.
- 8.3 The CUSTOMER shall obtain prior written authorisation from FRUITION in all instances where FRUITION has sanctioned the destruction of any proven defective goods. The CUSTOMER shall submit all supporting documents FRUITION may require. These amongst other include Destruction Certificates and supporting documents, providing the description of the GOODS; the number of items by variant/size, and other information as FRUITION may request regarding a particular batch.
- 8.4 It is the sole responsibility of the CUSTOMER to determine that GOODS ordered and delivered are suitable for the purposes of the intended use, and that the GOODS had been produced; packed and labelled in accordance with the Specifications and Packaging Materials approved by the CUSTOMER.
- 8.5 It is the sole responsibility of the CUSTOMER to ensure that it correctly mixes and/or blends the GOODS with water, sugar, and/or any other raw materials, it may use in the further processing and/or secondary manufacturing of products. FRUITION accepts no responsibility for damages caused by any incorrect mixing/blending/use by the CUSTOMER of the GOODS supplied by FRUITION.
- 8.6 FRUITION's liability in respect of any short delivery, damaged or defective GOODS shall be limited to replacement of such GOODS or, at FRUITION's entire discretion, granting the CUSTOMER a credit to the value of Ninety (90%) percent of the purchase price of the GOODS on condition that the CUSTOMER returns the damaged and/or defective Goods at its expense to FRUITION Wellington.
- 8.7 FRUITION will not accept any returns, and/or claims for returns, from the CUSTOMER whether damaged and/or expired; and/or near-dated; and/or overstocks or for whatever other reason, except in accordance with the provisions of this agreement.

- 8.8 The parties undertake to discuss claims and complaints in good faith with a view to resolve these in the shortest possible time frame.
- 8.9 Notwithstanding that the CUSTOMER may timeously submit a written claim in terms of sub-clauses 8.1 and 8.2 above, the CUSTOMER shall under no circumstances be entitled to withhold payment in respect of the GOODS, pending the resolution of such dispute or claim.

9. LIMITATION OF LIABILITY AND INDEMNITY:

- 9.1 Subject to clause 10.3 and while FRUITION warrants that the GOODS will be manufactured in accordance with the specifications:
- 9.1.1 FRUITION will not be liable to the CUSTOMER under any circumstances for any claim, loss, liability or damages (including special, indirect or consequential damages) whatsoever:
- 9.1.1.1 where such damages relate to the GOODS, the transaction between the CUSTOMER and FRUITION, and/or this agreement;
- 9.1.1.2 howsoever caused; and
- 9.1.1.3 howsoever arising, be it in contract, delict, common law, breach of duty or otherwise; and
- 9.1.2 if, despite the provisions of this clause 9, FRUITION is held to be liable to the CUSTOMER for any reason or for any cause, its liability to the CUSTOMER shall not exceed in the aggregate the total price paid or due to be paid by the CUSTOMER for the GOODS supplied to it to which such liability relates.
- 9.2 Subject to clause 10.3, the CUSTOMER hereby indemnifies FRUITION, its directors, employees and agents against any loss or damage suffered by FRUITION resulting from any claim made against FRUITION, its directors, employees and agents by any person, legal or juristic, for any loss, damage, death or injury arising out of the GOODS and/or their use for any purpose.
- 9.3 The CUSTOMER further indemnifies FRUITION for any infringement of any patent, copyright, design or trademark in manufacturing any GOODS in accordance with the specifications provided by the CUSTOMER, and the CUSTOMER hereby indemnifies and holds FRUITION harmless against any loss or damages suffered by FRUITION, including legal costs, as a result of any claim of this nature being brought against FRUITION.
- 9.4 Save for the warranties given in this agreement and any other written warranties or guarantees given to the CUSTOMER, FRUITION makes no warranties and/or representations in respect of the GOODS, or their use, for any purpose.

10. COMPLIANCE WITH LAWS, INSTRUCTIONS AND WARNINGS:

- 10.1 The CUSTOMER must, at all times:
- 10.1.1 comply with all relevant laws, regulations and standards relating to the GOODS, including but not limited to the loading, storage, stacking, handling and use thereof;
- 10.1.2 comply with the instructions provided by FRUITION in relation to the GOODS;
- 10.1.3 take proper notice of the warnings provided by FRUITION in relation to any hazards associated with the GOODS, and without limiting the generality thereof, the CUSTOMER must not on-sell or use the GOODS after their expiry date;
- 10.1.4 communicate the items listed in clauses 10.1.1 to 10.1.3 above to all persons to whom the CUSTOMER supplies the GOODS; and
- 10.1.5 ensure that the persons referred to in clause 10.1.4 above undertake to communicate the items listed in clauses 10.1.1 to 10.1.3 above to all persons to whom they supply the GOODS, and so on down the supply chain until the GOODS reach the end user.
- 10.2 As far as the law allows, the CUSTOMER indemnifies FRUITION from and against all claims instituted against FRUITION arising from the CUSTOMER's failure to comply with the CUSTOMER's obligations under clause 10.1.
- 10.3 If this agreement and/or any GOODS provided under this agreement is regulated by or subject to the **Consumer Protection Act, 68 of 2008 ("CPA")**, it is not intended that any provision of this agreement contravenes any provision of the CPA. Therefore, all provisions of this agreement must be treated as being qualified, to the extent necessary, to ensure their compliance with the provisions of the CPA.
- 10.4 **National Credit Act, Act 34 of 2005 ("the act") (as amended):** The CUSTOMER warrants that all information supplied by it, including financial information is true and correct. The reason for such information is solely due to the fact that FRUITION is committed to grant responsible credit.

11. INTELLECTUAL PROPERTY:

- 11.1 Where either of the Parties are the exclusive proprietor of formulae, patents, recipes, registered designs, specifications, trademarks, trade names, copyright and other industrial and intellectual property rights relating to

the GOODS, such Party reserves all such rights to itself and the other Party hereby undertakes not to infringe upon any such rights in its use of the GOODS.

- 11.2 Where FRUITION developed of any formulae/recipes/specifications at its cost it will be the exclusive owner thereof unless FRUITION agrees to sell such formulations/recipes/specifications to the CUSTOMER at a price to be determined by FRUITION, and full payment thereof has been received by FRUITION.

13. BREACH OR CANCELLATION:

- 13.1 Should the CUSTOMER commit any act of insolvency, be wound up, be placed under judicial management, enter into any arrangement or compromise with any of its creditors, be the subject of any resolution passed for its winding up or dissolution, have a judgment given against it in any court of law which remains unsatisfied for a period of Ten (10) Business 10 Days or breach any of the terms and conditions of this agreement, then FRUITION shall be entitled forthwith to cancel this agreement by written notice to that effect given to the CUSTOMER, which cancellation shall be without prejudice to any other rights which FRUITION may have at law, amounts outstanding becoming immediately due and payable to FRUITION.

14. DISPUTE RESOLUTION:

- 14.1 The parties shall endeavour to amicable settle any dispute.
- 14.2 If no amicable settlement is reached within Forty-Five (45) Business Days from notice of dispute sent by one Party to the other, the Parties shall refer the dispute to arbitration in accordance with the following provisions:
- 14.2.1 The matter shall be referred to the Arbitration Foundation of South Africa and the arbitration proceedings shall be held in Cape Town, with the Rules of the Arbitration Foundation, as amended, of South Africa will apply.
- 14.2.2 Each Party irrevocably agree that the decision of the arbitrator shall be final and binding and shall be carried into effect.
- 14.3 The arbitrator shall be if the question in issue is:
- 14.3.1 primarily an accounting matter, be an independent chartered accountant of at least 10 years standing;
- 14.3.1 primarily a legal matter, be a practicing Senior Counsel of not less than 5 years standing;
- 14.3.3 any other matter, an independent person agreed upon between the Parties to the dispute and, failing agreement, a person appointed by the President for the Cape Law Society.
- 14.4 The defaulting Party will be liable for the costs of arbitration.
- 14.5 Nothing in this Agreement or in this clause will prevent either Party from seeking interim or urgent relief from the court.

15 FORCE MAJEURE:

- 15.1 If either party is prevented from performing any of its obligations in terms of this agreement as a result of any existing or new law or as a result of any event beyond its reasonable control whether or not foreseeable, including general power failures, breakdown of telecommunication networks or computers, political intervention, imposition of sanctions, riot or insurrection, it shall not be liable for any failure to perform its obligations under this agreement while such event persists and shall have the right (unless such event has or is likely to persist for a period not exceeding Thirty (30) Business Days) to terminate this agreement at any time after the intervention of or becoming aware of such event.
- 15.2 If this agreement is terminated by either party in accordance with the provisions of this clause neither party shall have any claim or obligation in respect of any loss suffered or damages incurred as a result of such cancellation.

16. GENERAL:

- 16.1 No variation of, or addition or agreed cancellation to this agreement shall be of any force or effect unless it is reduced to writing and signed by or on behalf of the parties.
- 16.2 No indulgence, leniency or extension of time which a party (the "Grantor") may grant or show to the other, will in any way prejudice the Grantor or preclude the Grantor from exercising any of his rights in the future.
- 16.3 Each clause of this agreement is devisable the one from the other and if one clause or part of a clause is found to be unenforceable by a competent court, the balance of the clauses will still be of full force and effect.
- 16.4 The CUSTOMER shall not be entitled to cede any of its rights, nor assign any of its obligations hereunder without the prior written consent of FRUITION.
- 16.5 The CUSTOMER undertakes to notify FRUITION, in writing, within Twenty (20) Business days of any change in Ownership of the CUSTOMER'S business, or should the CUSTOMER be a company, of its share transactions whereby the majority shareholding is affected, failing which notice the entire balance owing, whether due or not, will immediately be deemed to be due and payable by the CUSTOMER.

17. GOVERNING LAW; JURISDICTION & COSTS:

- 17.1 These Terms and Conditions shall be governed by and construed in accordance with South African Law.

- 17.2 FRUITION shall be entitled at its option to institute any legal proceedings against the CUSTOMER in any Magistrate's Court having jurisdiction in respect of the CUSTOMER, notwithstanding that the amount claimed would otherwise exceed jurisdiction of the Court.
- 17.3 In the event of FRUITION instituting legal action against the CUSTOMER for the recovery of any amount outstanding, the CUSTOMER shall be liable for interest due, and payment of all costs and disbursements incurred by FRUITION on the scale as between attorney and client.
- 18. DOMICILLIA AND NOTICES:**
- 18.1 The Parties choose as their *domicilia citandi et executandi* their respective addresses as set out hereunder for all purposes arising out of or in connection with this agreement at which addresses all processes and notices arising out of or in connection with this agreement, its breach or termination may validly be served upon or delivered to the parties:
- 18.1.1 **FRUITION (PTY) LTD at:** **CNR OUDEBRUG & OUDE PONT STREETS, WELLINGTON
WESTERN CAPE, 7654.**
Facsimile Number: +27 (0)21 873 6421
E-mail Address: accounts@fruition.co.za
- 18.1.2 **THE CUSTOMER at:** _____

Facsimile Number: _____
E-Mail Address: _____
- 18.2 For purposes of this agreement the parties' respective addresses shall be as set out in Clauses 18.1.1 and 18.1.2 above, or at such other address in the Republic of South Africa of which the party concerned may notify the other in writing provided that no street address mentioned shall be changed to a post office box or *poste restante*.
- 18.3 Any notice given in terms of this agreement shall be in writing and shall –
- 18.3.1 If delivered by hand be deemed to have been duly received by the addressee on the date of delivery;
- 18.3.2 If transmitted by fax and/or electronic mail be deemed to have been received by the addressee on the day following the date of transmission,
unless the contrary is proved.
- 18.4 Notwithstanding anything to the contrary contained or implied in this agreement, a written notice or communication actually received by one of the parties from another including by way of fax transmission shall be adequate written notice or communication to such party.

ACKNOWLEDGEMENT BY CUSTOMER:

I acknowledge receipt of the above Agreement and understand and agree to the contents as binding to all transactions concluded between the CUSTOMER and FRUITION. I confirm that I am duly authorised to sign this Agreement on behalf of the CUSTOMER.

By signing this Agreement on behalf of the CUSTOMER, you acknowledge that you are duly authorised to do so. You must ensure that this is true and correct, as you will not be able to deny the truth of this acknowledgement.

**SIGNED ON BEHALF
OF CUSTOMER**

**NAME OF AUTHORISED
SIGNATORY**

DATE