

TERMS AND CONDITIONS OF SALE

Conditions

These conditions of sale ("**Conditions**") shall apply to and govern any and all transactions, quotations, tenders, offers to contract and contracts (whether written or oral) for the supply of goods concluded between Southern Canned Products (Pty) Ltd ("**the Seller**") and the buyer of such goods from the Seller ("**the Buyer**") ("**the Contract**"). This Contract shall be binding on the Buyer and the Seller irrespective of whether or not the Buyer has signed these Conditions or Contract. These Conditions shall be read together with all orders for goods which are accepted by the Seller and all invoices rendered by the Seller in respect thereof.

These Conditions supersede and exclude all terms and/or conditions imposed or sought to be imposed by the Buyer whether referred to in the Buyer's order or otherwise and the Seller's failure to object to any such terms and conditions of the Buyer shall not be deemed to be a waiver of these Conditions.

These Conditions shall be in addition to any credit agreement entered into between the Buyer and the Seller which allows for the purchase of goods on credit and shall apply to the goods that are the subject of such credit agreement.

These Conditions contain specific provisions to limit Seller's liability, allocate risk or liability to the Buyer or constitute an acknowledgement of facts by the Buyer. These Conditions have been highlighted in bold. Please pay particular attention to these Conditions since they limit the Buyer's ability to recover losses that it may incur in connection with the use of and the purchase of any of the goods supplied by the Seller.

Prices

The Buyer will be liable for the price of the goods indicated on the invoice issued by the Seller to the Buyer at the time of the Buyer placing its order together with the rates of all or any import/export taxes, duties, levies, deposits, surcharges, port charges, freight haulage, insurance charges, bunker surcharges, delivery costs and currency adjustments ("**Additional Charges**") imposed and prevailing at the time of the Seller and the Buyer entering into the Contract, and any variation in the Additional Charges shall be for the Buyer's account and shall be debited or credited accordingly.

Cancellation of Orders

The Buyer will only be entitled to cancel an order for goods to the extent that it is entitled to do so in terms of the Consumer Protection Act 68 of 2008 (as amended) ("**the Consumer Protection Act**") and provided that this Contract is not exempt from the provisions of the Consumer Protection Act as a result of the exemption provisions contained in Section 5 thereof.

Where a Buyer is entitled to cancel an order for goods in terms of the Consumer Protection Act, the Seller will be entitled to impose a reasonable cancellation charge on the Buyer, having regard to the goods that were ordered, the reasonable possibility of re-selling the goods and the length of notice of cancellation received from the Buyer. The Buyer will not be entitled to cancel an order where the Buyer expressly or implicitly required or expected the Seller to procure, create or alter goods specifically to satisfy the Buyer's requirements and the Seller will be entitled to claim full payment for such goods from the Seller.

Ownership and Risk

The responsibility for and risk of loss and damage in the goods shall pass from the Seller to the Buyer upon delivery and/or on the date when the goods are dispatched by the Seller to the carrier for delivery to the Buyer.

Ownership of the goods shall not pass and the Seller shall have absolute title thereto until payment in full in respect of such goods has been received by the Seller. The ownership in all products and/or materials into which such goods may be converted or processed or added shall vest in the Seller until payment in full has been effected. Until payment in full is effected, the Buyer shall hold such goods and/or products and/or materials for the Seller and owe to the Seller a fiduciary duty in relation thereto.

SOUTHERN CANNED PRODUCTS

27 21 958 2180  www.scproducts.co.za

3rd Floor, Waterside Place, Southgate Waterfront, Carl Cronje Drive, Tygervalley, 7530

DIRECTORS: GJ Wahl (*Managing*), JH van der Westhuizen (*Financial*), DK Murray,

Co Reg No: 2001/003911/07 A FSSC22000 certified company

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Reg No 1924/002590/06

VAT No 4350103539

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For as long as any such goods and/or products and/or materials remain the Seller's property, the Buyer shall store them carefully and adequately as to their kind, separate and clearly identified as the Seller's property. In the event of the Buyer renting the premises at which any such goods and/or products and/or materials are kept, the Buyer shall forthwith inform the landlord of the Seller's reservation of ownership of such goods and/or products and/or materials and in the event of the Buyer failing to do so to the satisfaction of the Seller, the Seller shall be entitled to do so. The Buyer shall upon the Seller's demand at any time forthwith deliver same to the Seller. The Buyer further undertakes to keep the goods and/or products and/or materials remaining the Seller's property free from any attachment, lien or any other legal charge or process and not to let, loan, sell, pledge or otherwise encumber such goods without the prior written consent of the Seller.

Delivery and Payment

The goods will be delivered to the agreed delivery address provided by the Buyer at the agreed date and time or within such reasonable time after concluding the Contract. The Seller will use its sole discretion in selecting a reputable carrier and appropriate means of delivery.

The Buyer undertakes to accept the goods upon delivery and to immediately insure the goods for its full value and keep the insurance until full payment for the goods has been effected to the Seller.

The Buyer has a responsibility to examine the goods on delivery and to verify that the condition and the content of the goods delivered are complete. Goods will have been considered to have been accepted by the Buyer on delivery, in good condition and with all components and/or other materials to be contained in the goods and in accordance with the Contract between the Seller and the Buyer, unless the Buyer, on delivery and/or within a reasonable time thereafter, notifies the Seller of any deficiencies and/or defects in the goods.

The acceptance of the goods by the Buyer or on its behalf shall in itself constitute an obligation to effect payment to the terms of the Contract. The Buyer shall not withhold, delay or otherwise refrain from making any payment hereunder on the due date thereof.

If the Contract specifies delivery in instalments, the Buyer acknowledges that each delivery shall be deemed to be a separate Contract and the failure of any delivery/ies shall not invalidate the terms in respect of the delivery/ies that duly occurred.

The Seller reserves the right to withhold deliveries and/or to deduct or set off any amounts in its possession, should a Buyer be in default of payment for any delivery.

Warranties and Limitation of Liability

The Buyer warrants that the labelling, design or manufacture of goods to its order, design or specification shall not render the Seller liable to any claim for the infringement of any third party rights or of any governmental or other regulations of the country of origin or destination of the goods or of any country which may have jurisdiction in respect of the goods and the Buyer shall indemnify the Seller against all claims, costs, expenses, liabilities and demands arising from or incurred by reason of any such infringement or alleged infringement of any third party right or any such aforementioned regulations.

The Seller disclaims all representations and warranties, including but not limited to warranties as to the availability, accuracy or content of information, goods or services, and warranties of merchantability or fitness for a particular purpose of information or goods.

The Buyer hereby further indemnifies the Seller and holds the Seller harmless against any loss, expense or damage suffered, or any claims which may be instituted against it by third parties, where the harm, loss, expense or damage suffered by such claimant resulted from the utilisation of the goods supplied, was suffered as a result of negligence on the part of the Buyer or alternatively, where the harm arose partly due to negligence on the part of the Seller and partly due to negligence on the part of the Buyer, in which event the Buyer will indemnify the Seller *pro rata* for such claim instituted against it having regard to the principles of the Law of Delict in South Africa.

The Buyer acknowledges and agrees that the Seller gives no warranty, guarantee and/or undertaking of any nature in regard to the goods purchased and the Seller shall not be liable for any consequential damages arising therefrom.

Returns

The Buyer will only be allowed to return goods to the Seller in accordance with its rights to do so (if any) under the Consumer Protection Act (to the extent the Consumer Protection Act is applicable to goods supplied pursuant to this Contract).



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In terms of the Consumer Protection Act, should the Buyer not be satisfied with the goods delivered, as a result of a defect or otherwise, the Buyer may, under certain circumstances, be entitled to either be refunded or have the goods replaced, as the case may be.

If, within 6 months of delivery of the goods to the Buyer, the goods are found to be defective or unsuitable for the purpose for which it was generally intended or not reasonably durable (based on circumstances and product type), the Buyer may return such goods to the Seller. Please note that the following will not render the goods defective and will not entitle the Buyer to a replacement or refund;

- where the Buyer or someone else authorised by the Buyer altered or damaged the goods;
- where the goods were made to the Buyer's specifications;
- where the Buyer expressly or implicitly required or expected the Seller to procure, create or alter goods specifically to satisfy the Buyer's requirements;
- by reason of its nature is likely to deteriorate, perish and/or expire;
- due to seasonal and regional availability of fruits and various other products, the exact ingredients of a particular item cannot be guaranteed and substitutions will be made, where required, using the nearest equivalent of products while taking into consideration taste and colour combinations.

It shall be at the sole discretion of the Seller to impose a reasonable charge for any consumption or depletion of the goods, unless that consumption or depletion was limited to a reasonable quantity necessary to determine whether the goods were acceptable to the Buyer.

The Buyer may not return goods which have been partially or entirely disassembled, physically altered, permanently installed, affixed, attached, joined or added to, combined with or embedded with other goods.

The Seller will only accept the return of goods if the Buyer is able to provide proof of payment/purchase.

Restrictions

The Contract is subject to any restrictions, requirements or regulations which may be made by the government or any authority in the country from which the goods are to be dispatched and the government or any authority in the country in which the goods are to be delivered. In the event of such matters delaying or preventing the manufacture, supply or transport of the goods, **the Seller shall not be liable to the Buyer or to any other person for any consequences arising therefrom or for any additional costs or charges incurred thereby. The imposition or increase of any tax or duty in the country in which the goods are to be delivered effected after the date of any contract entered into between the Seller and the Buyer but before delivery of the goods shall be for the Buyer's account, likewise, the Buyer will be entitled to any benefit arising if any such tax or duty is repealed or decreased during the same period.**

Events beyond the Seller's Control

The Seller will reasonably endeavour to meet the stipulated dates and time for delivery of the goods but cannot be held responsible for an event beyond its control that is not caused as a result of the Seller's fault, and could not reasonably have been foreseen by it and that renders the Seller unable to perform its obligations in terms of this Contract and such events shall include, but not be limited to fire, flood, storm, lightning or any natural disaster, civil disturbance, explosion, power failure or reduction of power supply, acts, orders or regulations of any governmental or regulatory authority, agency or department, unpredictable delays caused by traffic congestion, diversions or road works, strikes, power outages, industrial disputes and regulatory interference, lack or shortage of materials or inability to procure equipment and material or any other happening or contingency of any kind whatsoever preventing or hindering the manufacture, supply or delivery of the goods ("*force majeure*").

Should the Seller be unable to perform its obligations in terms of this Contract by reason of *force majeure*, it shall be excused from any liability therefore, whether direct or contingent or of any nature whatsoever and shall be entitled to such extension of time as may be reasonably required by it for performance of its obligations in terms of this Contract.

The Seller shall advise the Buyer of the occurrence of *force majeure* and shall use all reasonable endeavours to minimise the effect of any delay occasioned thereby and to continue with the performance of its obligations in terms of this Contract at the earliest possible opportunity. Should the event of *force majeure* continue for a period of 21 (twenty one) days, the Seller shall, at its sole discretion, be entitled to terminate this Contract with immediate effect.

Breach



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The Seller shall have the right to terminate this Contract with the Buyer by written notice to the Buyer if –

- the Buyer is in material breach of any of its obligations in terms of this Conditions and/or Contract, and in the case of a remediable breach, fails to remedy that breach within 7 (seven) days of receipt of a notice requiring that the breach be remedied;
- the Buyer commits an act of insolvency, be placed under business rescue, or be wound-up (whether provisionally or finally);
- the Buyer compromises with any of its creditors or endeavours or attempts to do so;
- the Buyer has made any incorrect or untrue statement or representation in connection with this Contract, or its financial affairs, or any particulars thereof;
- the Buyer ceases or threatens to cease to carry on business or suspends payment of all or substantially all of its debts or is unable to pay its debts as and when they fall due.

In the event of termination of this Contract, the Seller shall, in keeping with its rights of ownership in the goods not yet paid for, be entitled to immediately repossess the goods, without prejudice to any of its other rights to either –

- claim specific performance of the terms of this Contract and Conditions, with or without claiming damages; or
- to immediately cancel this Contract forthwith and claim and recover damages from the Buyer;

Upon termination of this Contract as a result of the Buyer's breach, as provided for above, the Buyer acknowledges and agrees that it shall remain liable for any and all amounts owing to the Seller in terms of this Contract.

Jurisdiction

These Conditions and the Contract shall be governed by and interpreted in accordance with the laws of the Republic of South Africa.

The Buyer consents to the jurisdiction of the Cape Town Magistrate's Court and/or High Court in respect of any action to be instituted against the Buyer by the Seller in terms hereof, notwithstanding that the amount of the claim may exceed the jurisdiction of such court. The Buyer will be responsible for all charges and expenses of whatsoever nature and incurred by the Seller in enforcing its rights in terms of this Contract, including, without limitation, by virtue of the foregoing, all legal costs on a scale as between attorney and client.

No Fixed Term and Amendments

This Contract may be amended in whole or in part by the Seller, provided it gives at least 5 (five) business days' written notice thereof to the Buyer. This Contract has no fixed term, and the Seller shall not be obliged to accept any order for goods placed by the Buyer and the Buyer shall not be obliged to place any orders for goods from the Seller, particularly if any amendment is not acceptable to the Buyer.

Notices and Dwelling

The Buyer chooses its physical address as set out in the _____ as its dwelling address for all purposes under this Contract at which address all processes and notices arising out of or in connection with this Contract, its breach or termination, may validly be served upon or delivered to the Buyer.

Any notice given in terms of this Agreement shall be in writing and shall -

- if delivered by hand be deemed to have been duly received by the addressee on the date of delivery;
- if posted by prepaid registered post be deemed to have been received by the addressee on the 4th (fourth) day following the date of such posting;
- if transmitted by facsimile or email be deemed to have been received by the addressee on the expiration of 24 (twenty four) hours after transmission;
- if sent by courier be deemed to have been received on the date of delivery by the courier service concerned, unless the contrary is proved.

Notwithstanding anything to the contrary contained or implied in this Contract, a written notice or communication received by the Buyer from the Seller including by way of facsimile transmission or email shall be adequate written notice or communication to the Buyer.

General

- No particulars contained in any advertising matter, catalogue or other publication supplied by the Seller, nor any verbal representation by any employee or agent of the Seller or any previous correspondence between the Seller and the Buyer shall form part of this Contract, nor shall they be treated as constituting a representation on the part of the Seller.
- No alteration, cancellation, variation of, or addition to this Agreement shall be of any force or effect unless reduced to writing and signed by all the parties to this Contract or their duly authorised representatives
- No indulgence, leniency or extension of time which any party may grant or show, shall in any way prejudice such party or preclude it from exercising any of its rights in the future.
- If any term or condition of this Contract becomes unenforceable for any reason whatsoever, that term or condition is severable from and shall not affect the validity of any other term or condition in this Contract. Failure or delay on the part of any party in exercising any of its rights hereunder will not constitute a waiver thereof, nor will it preclude any other or further exercise of the right in question.



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