

# **GENERAL TERMS AND CONDITIONS OF SALE of Khoisan Gourmet (Pty) Ltd**

last updated: February 2018

The conditions set forth herein shall apply to all transactions for the supply of goods and/or services entered into, or to be entered into, between Khoisan Gourmet (Pty) Ltd, hereinafter referred to as “the Company” and the purchaser being any legal person, firm, partnership, close corporation or company, hereinafter referred to as “the Buyer”:

## **1. Orders**

1.1 The Sellers offers are non-binding.

1.2 A contract only comes into force if the Company sends written confirmation within 14 days after receipt of the order or call-off request or delivers the order within this period.

1.3 After acceptances, orders may not be cancelled, in whole, or in part, or varied in any manner whatsoever, unless confirmed in writing by the Company.

## **2. Prices**

2.1 All prices are ex works plus packaging costs and VAT at the applicable statutory rate, unless otherwise agreed in writing.

2.2 The Company reserves the right to amend the prices accordingly if, once the contract has been concluded, costs increase or decrease, in particular owing to the conclusion of tariff agreements, changes in the price of the material and energy used or changes to transport costs, provided delivery is not to be made within two months of conclusion of the contract. The Buyer shall be provided with evidence of such increases in costs on request.

## **3. Payment**

3.1 Shall be in the currency as stated on the invoice, without deduction or set-off.

3.2 Shall be in full, in the form of cash or Electronic Fund Transfer (EFT), cash with order or against invoice or as stated on the invoice.

3.3 Incoming payments will be used to settle the oldest liabilities or the liabilities with the lowest security, as we may decide.

3.4 Any discounts or rebates granted only apply to the respective order for which they were agreed in writing, unless otherwise agreed in writing.

3.5 In principle payments shall be made by bank transfer. Any transfer costs shall be borne by the Buyer.

3.6. The Buyer is automatically in default of payment 10 days after the due/invoice date, unless the Buyer is not responsible for non-payment. In the event of default of payment the Company is entitled to demand interest at a rate of 2 % per months of the total amount due as shown on the invoice. The Company reserves the right to make further claims over and above this. If payment by instalments has been agreed and if the Buyer defaults on payment of an instalment the residual debt from the contractual relationship shall be due for payment immediately.

3.7 Part deliveries will be charged for immediately and are payable separately, irrespective of whether delivery has been completed. In the absence of a written agreement, down payments on the formation of contracts will be charged against the oldest part deliveries.

3.8 The Buyer agrees and undertakes to notify the Company immediately of any material factor which could or might have a bearing on the credit facilities extended to the Buyer by the Company, and furthermore undertakes to notify the Company immediately of any material change of or concerning the Buyer, including any change of ownership, shareholding, status, name and address.

#### **4. Delivery**

4.1 Time shall not be of the essence in the contract.

4.2 Any time or date specified for delivery by the Company or the Buyer, in respect of any sale, shall be approximation and guide only.

4.3 If the Company is unable to effect delivery of any part of the goods on the date or time stipulated by it or the Buyer, the Buyer shall be obliged to take delivery as and when the Company can reasonably effect such delivery.

4.4 The Company endeavours to effect delivery on any date specified by it or agreed upon by it, but does not give any warranties of whatsoever nature or kind and it shall not be held responsible for any damages of

whatsoever nature, or loss of profit, or any consequential or indirect damages which the Buyer may suffer as a result of such later delivery.

4.5 The Company is entitled to charge storage costs where the Buyer requests the Company to withhold or postpone delivery, and the Company agrees thereto, and the Buyer undertakes to pay any and all storage costs related to goods not taken, at the prevailing storage rates charges by the Company. The Company also reserves the right to cancel the delivery in case the delivery is postponed for more than 2 weeks.

4.6 Unless agreed otherwise in writing, the risk in and to the goods purchased shall pass to the Buyer upon delivery, or when delay in acceptance occurs. Such delivery will be deemed to have been effected upon tender of the goods for acceptance by the Buyer within normal business hours, at the Buyers place of business or such other place nominated by the Buyer, or the Company's place of business, if the Buyer elects to collect the goods. If, in individual cases, diverging trade clauses are agreed these shall be interpreted in accordance with INCOTERMS 2010 in the version which prevails on conclusion of the contract.

4.7 In the event of the Company, for any reason whatsoever, not being able to effect delivery of all the goods, the Company may, in its discretion, effect delivery of such goods as it can, and the Buyer is obliged to accept such partial delivery of goods, and such delivery shall be deemed to be a sale for such listed quantity of goods, concluded in terms of these terms and conditions.

4.8 Should the Buyer have any claim whatsoever, arising out of a partial delivery of the goods, the Buyer shall, notify the Company within 24 hours of receiving or tendering of possession of the goods by the Company or the carrier of the goods, where the carrier is the Company's agent; and endorse the delivery note accordingly. In the event where FOB or CFR terms are agreed on (based on INCOTERMS 2010), the Company has no influence on the delivery times of the goods and is not accountable for it.

4.9 Unless the Buyer gives notice within 10 days after receiving the partial delivery, in terms of 4.8 above, the Buyer shall be deemed to have received the goods as set out in the delivery note and relevant invoices.

4.10 Notwithstanding anything previously contained herein, no carrier, as agent of the Company, shall be obliged to enter the premises of the Buyer to enable offloading to be effected. However, if such vehicle should enter the Buyer's premises, it shall be deemed to do so at the Buyer's specific instance and request, and in that event the Company and/or its servants and/or agents shall accept no liability for damage or loss occasioned to the Buyer or any third party, arising in any way from such entry or for that matter, exiting from the Buyer's premises, or from the offloading thereof, or from any negligent act or omission of the Company of its agent

carrier during the course of entering, exiting or offloading. Further, the Buyer hereby indemnifies and holds the Company harmless against liability for any such damage or loss.

4.11 The last send out of deliveries for the year will take place in November. This also applies for call off orders in the case of blanket contracts.

## **5. Reservation of Ownership and Appropriation of Payments**

5.1 Notwithstanding anything herein before or elsewhere contained, ownership of the goods shall, at all times, remain vested in the Company, until the Buyer has made full payment of the purchase price. No latitude or extension of time given to the buyer shall in any way vitiate or novate the Company's rights hereunder. In the event of any default on the part of the Buyer, the Company shall, without prejudice to any other rights it may have, and without notice, be entitled, on demand, to obtain return of the goods, in so far as payment for the goods has not been made in full. The Buyer also consents to a Court Order against it for the attachment and removal of such goods by the Sheriff of the relevant Court.

5.2 The Company shall be entitled, at its discretion, to appropriate any payments made towards the reduction of any indebtedness to it by the Buyer as well as interest, at the Company Bank's prevailing prime rate.

5.3 The Company is not obliged to accept returned goods where the Buyer has made an error in its order, and the Buyer remains fully liable for the full price of the goods so ordered.

## **6. Limitation of Company's Liability**

6.1 The Company does not give any warranty against defects in the goods supplied, be they patent or latent. The Company does not give any warranties or guarantees of any other nature or make any representations whatsoever in respect of the goods, or of its fitness for any particular purpose, whether or not that particular purpose is, or could be, deemed to be known to the Company, other than any warranty or guarantee that may have been expressly given in writing. The Company shall be deemed to be unaware of the particular purpose for which the goods or any product made there from is required.

6.2 Before dealing in any manner with the goods supplied against any order; the Buyer must satisfy itself that the goods are suitable for the purpose for which they are to be used, and are free from any defects of whatsoever nature, against any claim brought against the Company by any Third Party arising out of the unsuitability of the goods for any particular purpose whatsoever.

6.3 The Company shall not be liable under any circumstances whatsoever, for any loss of profit or other special damages, out of any of its obligations under this contract, or any act of negligence and or omission on the part of the Company and/or its employees or for any other reason, whether of the same kind, with the foregoing, or otherwise howsoever.

6.4 The onus shall be on the Buyer to satisfy itself that the goods supplied are for the purpose for which the goods are to be used, there being no obligation on the Company to guarantee such suitability.

6.5 It is the Buyers responsibility to check the delivery within 10 days of receipt of the goods for any defaults and to notify the Company thereof in writing. Likewise the Buyer is also responsible for keeping the products free of contamination, for appropriate storage and pest control.

6.6 No agreement, warranty, condition, representation, promise, statement or undertaking, whether made before after a sale, shall be binding on the Company unless contained herein or confirmed officially in writing under the Company's signature.

## **7. General**

7.1 These Conditions of Sale shall supersede any other conditions of sale or similar the Company might have signed of the Buyer.

7.2 No variation, amendment or alteration of these Conditions of Sale shall be effective unless reduced to writing and signed by a duly authorised representative of the Company and the Buyer and explicitly state that these variations or amendments shall supersede the Conditions of Sale of this Terms & Conditions of Sale.

7.3 Wherever, in these Conditions, provision is made for the amendment or variation thereof between the Buyer and the Company, in writing, the onus shall be on the Buyer to establish that the representative of the Company, in entering into such variation or amendment to the terms hereof, was authorised to do so.

7.4 In the event of any order from the buyer providing for the delivery of the goods at/in various stages, then each delivery shall be deemed to be a separate and divisible contract and the terms and conditions herein contained shall apply to each delivery as if the same were the subject of an independent contract. No dispute arising from any such one delivery shall affect the balance of the contract between the Company and the Buyer arising from prior deliveries. The Company shall have the right to claim pro rata payment in respect of each consignment delivered to the Buyer.

7.5 The Buyer agrees that its signature of its employees or any person purporting to represent it on the official delivery note or waybill of the Company, be sufficient proof of delivery of the goods from time to time.

## **8. Variations in quality and weight**

As soon as the delivery has left the premises of the Company, any variations in quality due to the nature of the goods, particularly variations in odour and taste, shall not entitle the Buyer to make complaints or to raise any claims. Likewise any variations to the weight of the goods (gain or loss (which might be due to drying loss)), shall not entitle the Buyer to make complaints or to raise any claims.

## **9. Specifications at time of order**

9.1 The documents accompanying the offer, such as details concerning weight and dimensions, are only approximate as far as they have not expressly been designated as binding.

9.2 The supply of the goods will be as to the agreed specifications at time of order.

9.3 Order Specifications need to be requested in writing and confirmed in writing by the Company.

9.4 It will be at the discretion of the Company to accept any additional specifications/ documentation after the order has been placed.

## **10. Complaints**

Complaints made by businesses may only be taken into account if the Company is notified of them in writing and in detail within 10 days of the receipt of the goods and before they are processed. If the Company accepts the complaint, the Company reserves the right to deliver a replacement or to issue a credit note. All further claims are excluded and the Company will particularly not be liable for consequential damage as a result of these goods being processed.

## **11. Warranty Period**

The Warranty Period is based on the expiry date of the products. It is the responsibility of the Buyer to request in writing the expiry date of the products from the Company. In case an extended expiry date is requested by the Buyer to be stated on the products instead of this expiry date, the warranty period will still be based on the expiry date the Company has originally announced. The Company's manufacturer warrants that the goods sold

by the Company will be free from defects in materials or workmanship, under normal use and service, for the appropriate warranty period.

## **12. Force Majeure**

If the agreement becomes wholly or partially impossible to perform due to causes beyond the control of the Company, such causes to include, but not be limited to; war, civil insurrection, *vis maior*, Government action and industrial disputes, the Company shall be permitted to rescind the agreement at its discretion. If deliveries of goods or services shall be delayed as a result of such causes, the Company shall not be construed as being in breach of the agreement.

## **13. Breach**

13.1 Where the Buyer, in anyway, breaches the terms of the agreement, and does not remedy same within 24 hours of verbal or written warning to that effect, then the Company, in its discretion may resile from the agreement and claim return of the goods or its current market value in Rands, determinable from the relevant invoice, as well as being able to retain any monies already received from the Buyer, as damages.

13.2 The Magistrate's Court will be the forum which will deal with any matters of breach and surrounding issues, and concurrently the Laws of the Republic of South Africa will be applicable.

## **14. Costs**

If the Buyer is in anyway in breach of the agreement and the Company engages the services of an attorney to collect the whole or portion of the amount owing to it by the Buyer, or to sue for any other damages as a result of breach by the Buyer, the Buyer shall be liable to pay all costs occasioned as a result thereof, including collection charges and costs on an attorney and own client scale.

## **15. Jurisdiction and Applicable Law**

15.1 The exclusive – and international- place of jurisdiction for all disputes arising out of the contractual relationship between the Parties shall be Cape Town, South Africa. We are, however, entitled to commence legal proceedings at the business seat of the Buyer.

15.2 The General Conditions of Sale and Delivery and all legal relations between the Parties shall be governed by the laws of the Federal Republic of South Africa.

## **16. Domicilium Citandi Et Executandi**

The Company hereby elects as its domicilium citandi et executandi, at which it will accept service of any process or notice:

**6 Gold Street, Northgate Estate, Ysterplaat, 7405, South Africa**