

WYDA PACKAGING PROPRIETARY LIMITED
Registration Number 2016/127590/07
(hereinafter referred to as "the Seller")

THE SELLER'S TERMS AND CONDITIONS OF SALE

1. TERMS OF THE AGREEMENT

- 1.1 The terms hereof shall form part of and apply to all existing contracts and to all future contracts or other agreements entered into between the Seller and the Purchaser unless specifically excluded or amended by the Seller, such exclusion or amendment to be in writing.
- 1.2 Unless otherwise specifically stipulated in writing to the contrary, the terms hereof shall supersede and prevail over any terms and conditions contained in any documents submitted by the Purchaser.

2. DEFINITIONS

- 2.1 In this Agreement, unless the context indicates a contrary intention, the following words and expressions shall bear the meanings assigned to them hereunder and cognate expressions shall bear corresponding meanings:-
- 2.1.1 this Agreement – the Sale of Product Agreement, incorporating and read together with the terms and conditions of sale recorded herein as well as any annexures and/or schedules hereto;
- 2.1.2 CPA – the Consumer Protection Act No 68 of 2008;
- 2.1.3 Effective Date – the affective date specified in the Sale of Product Agreement to which these terms and conditions are incorporated;
- 2.1.4 Force Majeure – in relation to either Party, any circumstances beyond the reasonable control of the Party (including, without limitation, any strike, lock-out or other form of industrial action);
- 2.1.5 Minimum Product Quantity – the minimum quantity of the Products to be purchased by the Purchaser from the Seller on a monthly basis as set out in the Sale of Product Agreement;
- 2.1.6 Parties – the Seller and Purchaser; and "Party" shall mean either one of them as the context requires;
- 2.1.7 Premises – the premises specified in the Sale of Product Agreement;
- 2.1.8 Product/s – the product/s specified in the Sale of Product Agreement;
- 2.1.9 Purchaser – the party specified as the purchaser in the Sale of Product Agreement;
- 2.1.10 the Sale of Product Agreement – the Sale of Product Agreement signed by the Seller and the Purchaser relating to the sale of the Products or any contract entered into by the Seller and the Purchaser relating to the Products;
- 2.1.11 Trade Marks – the trade marks used by the Seller on or in relation to the Products at any time during the subsistence of the Sale of Product Agreement.

3. INTRODUCTION

- 3.1 The Purchaser wishes to purchase the Products from the Seller and wishes to appoint the Seller as its exclusive supplier of the Products upon the terms and conditions contained in this Agreement.
- 3.2 The Seller wishes to sell to the Purchaser the Products upon the terms and conditions contained in this Agreement.

4. DURATION

Subject to the grounds of termination set out in these terms and conditions, the Sale of Product Agreement shall endure for the duration set out in the Sale of Product Agreement.

5. SUPPLY SALE AND PURCHASE

- 5.1 The Seller hereby agrees and undertakes to supply and sell to the Purchaser, which undertakes to purchase, with effect from the Effective Date the Minimum Product Quantity. It is recorded that in the event that the Minimum Product Quantity is not specified in the Sale of Product Agreement, the provisions of this clause shall not apply.
- 5.2 In the event that the Purchaser complies with its obligations in terms of this Agreement, and specifically the obligation to purchase the Minimum Product Quantity, the Seller agrees that it shall supply the Product to the

Purchaser on an exclusive basis. Notwithstanding the foregoing, the Seller shall be entitled to sell the Product to any third parties in the event that the Purchaser does not purchase any excess Product over and above the Minimum Products Quantity.

5.3 The purchase price in respect of the Product is as set out in the Sale of Product Agreement.

5.4 The Purchaser may not cancel any order placed, except upon written notice accepted by the Seller in writing and on payment of a reasonable cancellation charge. The cancellation charge shall constitute all the expenses and reasonable costs incurred by the Seller up to and including the date of acceptance of the cancellation of the order by the Seller.

6. PAYMENT

6.1 The Seller shall invoice the Purchaser for the Product on the date of delivery of the Product to the Purchaser.

6.2 Payment in respect of the Product sold shall be required to be effected 30 (thirty) days from date of statement. Unless agreed otherwise by the Seller, the purchase price for the Product shall be secured by way of a confirmed irrevocable letter of credit issued by a South African bank of good standing or such other financial institution acceptable to the Seller, which letter of credit shall be furnished to the Seller upon receipt of confirmation from the Seller of the order of the Product.

6.3 All payments shall be made by the Purchaser in South African Rands by bank transfer to such bank account as the Seller may from time to time notify in writing to the Purchaser.

6.4 The Seller shall be entitled to charge interest on all overdue amounts at the prime overdraft rate charged by the Seller's principal bankers from time to time (as certified by any General Manager of that bank, whose appointment and authority it shall not be necessary to prove). Such interest shall be calculated and payable monthly in advance on the first day of each and every successive month on the balance outstanding from time to time by the Purchaser to the Seller, and shall be added to the amount due to the Seller by the Purchaser in respect of the purchase price of the Product. All payments shall be appropriated firstly in respect of such interest and thereafter in respect of capital amounts payable, it being recorded and agreed that the Seller shall be entitled to appropriate payments received from the Purchaser to whichever of the Purchaser's debts as the Seller may in its sole discretion elect.

7. DELIVERY

Unless agreed otherwise in writing by the Parties or save as set out in the Sale of Product Agreement:

7.1 the Seller shall deliver the Product to the Purchaser at the Premises;

7.2 the costs of delivery of the Product shall be borne and paid for by the Purchaser.

8. RISK AND OWNERSHIP

8.1 Risk in the Product shall pass to the Purchaser on delivery of the Product to the Purchaser at the Premises.

8.2 Ownership of the Products shall remain vested in the Seller until the purchase price in respect thereof has been paid in full.

9. CLAIMS ON DEFECTIVE GOODS

9.1 Subject to the provisions of clause 9.2, the Products are sold voetstoots and without any implied merchant's or manufacturer's warranties and the Purchaser shall have no claim whatsoever against the Seller, whether in contract or in delict, for any loss or damage suffered by the Purchaser as a result of the Products being defective. The Purchaser indemnifies the Seller against any loss and/or suffered by the Seller as a consequence of a claim by any person in terms of sections 56 and/or 61 of the CPA.

9.2 The Seller shall be responsible for defective Products. The Seller's obligations and liability in respect of any defective Products shall be limited to replacing any of the Products which shall be reported to the Seller in writing and be demonstrated to be defective as soon as the Purchaser is able to do so, but in any event by not later than 14 (fourteen) days after delivery of the Products to the Purchaser.

10. LIMITATION OF LIABILITY

The Seller shall in no circumstances whatsoever be liable for any loss of profit or any damage, direct or indirect, consequential or otherwise sustained by the Purchaser whether or not caused by the negligence of the Seller, its agents or employees.

11. CONFIDENTIALITY

11.1 Each Party shall use its best efforts to keep in strict confidence, and shall bind all of its employees, consultants, agents and representatives to keep in strict confidence, all commercial and technical information, in whatever form, acquired by it (whether directly or indirectly) from or concerning the other Parties to this Agreement ("the confidential information").

11.2 None of the Parties shall utilise such confidential information for any purpose other than for the purpose of

considering, advising in relation to, or furthering the objects of this Agreement.

11.3 Further, no Party shall at any time disclose any confidential information to any third party for any purpose other than that contemplated in this Agreement, without the prior written consent of the other Party.

11.4 The following information shall be excluded from the foregoing scope of confidential information:

11.4.1 information which, at the time of disclosure, is generally available to the public;

11.4.2 information which, after disclosure, becomes generally available to the public through no fault of the receiving Party;

11.4.3 information which the receiving Party can show was in its possession prior to disclosure and which was not acquired directly or indirectly from any other Party;

11.4.4 information which the receiving Party can show was received by it from any Party outside this Agreement, without any obligation of confidentiality;

11.4.5 information which the receiving Party is obliged to disclose at law.

11.5 The confidentiality obligations set out in this Agreement shall apply at all times and will survive this Agreement.

11.6 Each Party shall impose the same confidentiality obligations set out in this Agreement upon its agents, employees, consultants and other third parties who are in association with it and may have access to any of the confidential information.

12. INTELLECTUAL PROPERTY

12.1 The Purchaser shall have no rights in respect of any trade names, intellectual property or Trade Marks used by the Seller in relation to the Products or of the goodwill associated therewith, and the Purchaser hereby acknowledges that it shall not acquire any rights in respect thereof and that all such rights and goodwill are and shall remain vested in the Seller.

12.2 It is recorded and agreed that all of the intellectual property in relation to the Products shall at all times remain the property of the Seller and that, save as set out herein, the Purchaser shall not have any rights in or to such intellectual property.

13. RELATIONSHIP OF PARTIES

The relationship of the Parties shall be governed by this Agreement and, save as expressly provided in this Agreement, no Party shall be entitled to represent or hold itself out as being the partner or agent of the other or as being able to bind the credit of any other.

14. FORCE MAJEURE

14.1 If either Party is affected by Force Majeure it shall forthwith notify the other Party of the nature and extent thereof.

14.2 Neither Party shall be deemed to be in breach of this Agreement, or otherwise be liable to the other, by reason of any delay in performance, or non-performance of any of its obligations hereunder, to the extent that such delay or non-performance is due to any Force Majeure of which it has notified the other Party; and the time for performance of that obligation shall be extended accordingly.

14.3 If the Force Majeure in question prevails for a continuous period in excess of 3 (three) months, the Parties shall enter into bona fide discussions with a view to alleviating its effects, or to agreeing upon such alternative arrangements as may be fair and reasonable.

15. THE CONSUMER PROTECTION ACT

15.1 The Purchaser warrants and represents that, to the extent that its activities are subject to the CPA, it shall ensure compliance with all provisions of the CPA in its dealings with consumers, irrespective of the provisions of these terms and conditions.

15.2 The Purchaser acknowledges and confirms that at the time of signing these terms and conditions, its annual turnover or asset value exceeds the threshold determination contemplated in section 6 of the CPA, meaning that the transaction contemplated in terms of this Agreement is exempt from the majority of the provisions of the CPA ("the Threshold Amount"). The Purchaser undertakes to notify the Seller, in writing, as soon as there is a material change to its business which results in it falling below the Threshold Amount so that these terms and conditions can, where necessary, be amended to ensure compliance with the CPA.

16. BREACH

In the event of either of the Parties ("the defaulting party") committing a breach of any of the terms of this Agreement and failing to remedy such breach within a period of 7 (seven) days after receipt of a written notice from the other Party ("the aggrieved party") calling upon the defaulting party to remedy the breach complained of, then the aggrieved party shall be entitled at its sole discretion without prejudice to any of its other rights in law, either to claim specific performance of the terms of this Agreement or to cancel this Agreement forthwith and without further notice, in either event, claim

and recover damages from the defaulting party.

17. DOMICILIUM CITANDI ET EXECUTANDI

17.1 The Parties choose as their *domicilia citandi et executandi* for all purposes under this Agreement, whether in respect of payments, court process, notices or other documents or communications of whatsoever nature the addresses set out in the Sale of Product Agreement.

17.2 Any Party may by notice to the other/s change the physical address chosen as its *domicilium citandi et executandi* to another physical address in the Republic of South Africa, or its telefax number or its e-mail address, provided that the change shall only become effective upon receipt of the notice by the addressee.

18. GENERAL

18.1 No variation, alteration or consensual cancellation of any of these terms and conditions, and/or of any contract entered into between the Seller and the Purchaser, shall be of any force or effect, unless in writing and signed by a Director of the Seller and the Purchaser.

18.2 No waiver or abandonment by the Company of any of its rights in terms of these terms and conditions, and/or in terms of any contract entered into between the Seller and the Purchaser, shall be binding on it unless such waiver or abandonment is in writing and signed by it.

18.3 No indulgence, extension of time, relaxation or latitude which the Seller may show, grant or allow to the Purchaser shall constitute a waiver by it of any of its rights and the Seller shall not thereby be prejudiced or estopped from exercising any of its rights against the Purchaser which may have arisen in the past or which might arise in the future.

18.4 The provisions hereof shall prevail over any terms and conditions which the Purchaser may purport to impose or apply and which are contrary to the terms hereof.

18.5 The Purchaser shall not be entitled to cede, assign or otherwise transfer any of its rights, interests or obligations under and in terms of this Agreement

18.6 The Purchaser hereby acknowledges and agrees that information concerning the credit worthiness of the Purchaser may be disclosed to any registered credit bureau and/or any other suppliers.

18.7 The Seller shall not be bound by any undertakings, warranties, representations or any other terms and conditions which are not recorded in writing and signed by the Seller.

18.8 The Seller shall have the right to amend these terms and conditions on notice to the Purchaser and the Purchaser shall be deemed to have agreed to such amendment/s unless within a period of 30 days from date of notice the Seller receives a notice of objection to such amendment in writing from the Purchaser. If the Purchaser objects to the amendment and the Seller does not accept the objection, at the Seller's election:

18.8.1 the existing terms and conditions will continue to apply;

18.8.2 the Seller will cease to supply the Products to the Purchaser.