

1. INTERPRETATION

- 1.1. In this Agreement: -
 - 1.1.1. the clause headings are for convenience only and are not to be used in the interpretation for the provisions herein contained;
 - 1.1.2. the contra proferentum Rule of interpretation, which dictates that in the event of any ambiguity in the wording of the contract rendering two or more plausible meanings to the contract, that the meaning to be assigned will be the meaning least favourable to the party responsible for the drafting of the contract, is expressly excluded from application in the interpretation of any provisions of this Agreement;
 - 1.1.3. unless the context dictates a contrary intention, an expression which denotes: -
 - 1.1.3.1. any gender includes the other genders;
 - 1.1.3.2. a natural person includes a juristic person and vice versa; and
 - 1.1.3.3. the singular includes the plural and vice versa.
- 1.2. The words "clause" or "clauses" and "annexure" and "annexures" refer to clauses of and annexures to these standard Terms and Conditions of Trade.
- 1.3. Any reference to days shall be construed as being a reference to calendar days unless qualified by the word business in which instance a business day shall be any day other than a Saturday, Sunday and/or Public Holiday as gazetted by the Government of the Republic of South Africa, from time to time.
- 1.4. Any reference to business hours shall be construed as being the hours between 08h00 to 17h00 on any business day, and any reference to time shall be a reference to South African standard time.
- 1.5. The words "include", "includes" and "including" means include without limitation, includes without limitation, and including without limitation.
- 1.6. The use of the word "including" followed by a specific example(s) shall not be construed as limiting the meaning of the general wording preceding it. The application of the eiusdem generis Rule is expressly excluded from application in the interpretation of any provision of these standard Terms and Conditions of Trade.
- 1.7. Any substantive provision, conferring rights or imposing obligations on a Party and appearing in any of the definitions in Clause 2 or elsewhere within the standard Terms and Conditions of Trade or in any annexure, shall be given effect to as if it were a substantive provision within the body of these standard Terms and Conditions of Trade or any annexure concerned, as amended from time to time.
- 1.8. The terms other than those defined in these standard Terms and Conditions of Trade will be given their plain English meaning.
- 1.9. Defined terms appearing in these standard Terms and Conditions of Trade in title case shall be given their meaning as defined, while the same terms appearing in lower case shall be interpreted in accordance with their ordinary meaning as qualified in clause 2 and shall unless context otherwise indicates, include the term as defined;
- 1.10. A reference to any statutory enactment shall be construed as a reference to that South African enactment as at the date of signature of these standard Terms and Conditions of Trade, as amended or suspended or substituted from time to time and includes all regulations thereto;
- 1.11. Unless specifically stated otherwise, any number of days prescribed shall be determined by excluding the first day and including the last day, and where the last day falls on a Saturday, Sunday and/or Public Holiday, the next succeeding business day; and
- 1.12. Where figures are referred to in numerals and in words, and where there is a conflict between the two, the words shall prevail, unless the context dictates otherwise.

2. DEFINITIONS

- 2.1. The following words bear the following meanings: -
 - 2.1.1. **"Confidential Information"** means all proprietary and confidential information, in whatsoever form, relating to one party including but not limited to Intellectual Property, technical information, recipes, business information, marketing, advertising strategies and methodologies, Customer and/or Supplier lists, and personal information, as defined in the Protection of Personal Information Act, 2013, pricing, financial information which is made available in connection with this Agreement to the other Party and which is not already in the public domain;
 - 2.1.2. **"Intellectual Property"** means all patents, registered or unregistered trademarks, service marks, copyright, designs and applications for any of the foregoing, any know how and trade secrets and data associated with any of the foregoing;
 - 2.1.3. **"the Agreement"** means the Standard Terms and Conditions of Trade and any annexures thereto;
 - 2.1.4. **"Famasons"** means All Sorts Bakery Products (Pty) Ltd t/a Famasons;
 - 2.1.5. **"the Customer"** means the entity transacting with Famasons;
 - 2.1.6. **"Product"** means any Product of whatsoever nature, equipment, ingredients offered for sale by Famasons, which is more specifically described on Famasons's forms, price lists, quotations, orders, delivery notes and/or invoices and shall include but not be limited to the AALST range of compound and Couverture Chocolate used in the manufacture of baked Product, confectionary, desserts, beverages and ice-cream and other related premium bakery ingredients.

3. THE AGREEMENT AND ACCEPTANCE

The Customer agrees that:

- 3.1. these Terms and Conditions shall apply to every Order and Agreement entered into by and between Famasons and the Customer and shall regulate the parties' relationship and responsibilities to each other in respect of all sales of goods and services;
 - 3.1.1. these Terms and Conditions are and will be final and binding upon the Customer and is not subject to any suspensive or resolutive terms and conditions;
 - 3.1.2. these Terms and Conditions supersede, and replace all prior agreements, understandings and representations save for securities and guarantees held by Famasons which shall continue to remain of force and effect, and remain binding on the Customer;
 - 3.1.3. these Terms and Conditions supersede the Customer's own terms and conditions;
 - 3.1.4. the Terms and Conditions attached to, contained in or referenced on any Order are expressly excluded from and are superseded by these Terms and Conditions.
 - 3.1.5. Any Order, where no Credit Application Form has been signed by the Customer, are submitted to Famasons subject to these Terms and Conditions and the Agreement comes into existence upon the Customer accepting the Quotation or Order Detail verbally or in writing.

4. CREDIT FACILITY TERMS

- 4.1. Save where expressly agreed otherwise purchases of Product shall be settled on a cash-on-delivery basis, by means of Electronic Funds Transfer into Famasons banking account.
- 4.2. If payment terms are approved, late payment of any amount shall accelerate the due date for payment of any and all other amounts then owed by the Customer, notwithstanding the terms approved, such that all amounts then outstanding shall immediately become due, owing and payable.
- 4.3. Payment shall only be deemed to have been made once the funds are reflecting in Famasons banking account. FRAUD ALERT: Should the Customer receive notice of change of banking account particulars, before making any payments into the new bank account, the Customer must obtain written confirmation from Famasons' credit control manager authenticating the notice and its content.
- 4.4. Overdue accounts shall:
 - 4.4.1. bear interest at the prime overdraft rate quoted by Famasons bankers (whose designation it shall not be necessary to prove) plus 2%;
 - 4.4.2. entitle Famasons, without prejudice to any other rights it may have, to suspend supply of Product until the account is brought up to date, and to reverse any trade discount which may have been allowed in respect of the transactions for which payment is overdue; and
 - 4.4.3. automatically suspend any rights which the Customer may have relative to any warranty which may have been given in respect of Product sold.
- 4.5. Indebtedness to Famasons shall be determined and proved by a certificate signed by the credit controller or member of Famasons whose designation it shall not be necessary to prove, the content of which shall constitute prima facie proof, binding upon the Customer and a liquid document for the purposes of provisional sentence or summary judgement.
- 4.6. The Customer hereby consents, in terms of Section 45 of the Magistrate's Court Act No. 32 of 1944 (as amended) to the jurisdiction of the Magistrate's Court in respect of any action which may be instituted by Famasons, notwithstanding the amount in issue, without in anyway restricting or inhibiting the rights of Famasons to approach any High Court of competent jurisdiction.
- 4.7. The Customer selects its physical address as appears on this application/its delivery address as its domicilium citandi et executandi for all purposes hereafter relative to Famasons.
- 4.8. Should Famasons instruct its Attorneys to collect any overdue debts, or to take any action against the Customer in the implementation or protection of its rights, Famasons shall be entitled to the recovery of all legal costs arising there from on the scale as between Attorney and Own Client, including collection commission and tracing agents fees as well as counsel's fees.
- 4.9. Notwithstanding the acceptance of this application, the nature, extent, duration and very existence of any credit facilities which may be extended to the Customer from time to time shall always remain in the sole discretion of Famasons.
- 4.10. Famasons shall be entitled to allocate and/or relocate any payments received from, or credits granted to the Customer towards any obligation owed by the Customer and, until so allocated, all such payments or credits shall be deemed to have been allocated to such debt/s as would most favour Famasons in such allocation.
- 4.11. The Customer shall not be entitled to set off any amount which it may allege is owed to it by Famasons against any amount which may be payable by it to Famasons.
- 4.12. Any change in the Customer, including change of status, shall not prejudice Famasons in respect of trading with the Customer and/or its successors thereafter and all persons liable to Famasons in terms of this application shall continue to be liable with the Customer and/or its successors jointly and severally thereafter as co-principal debtors, no less than subsisted prior to the change.

5. LIMITATION OF LIABILITY

- 5.1. Famasons shall not be liable for:
- 5.1.1. Any indirect or consequential loss or damage;
 - 5.1.2. Any loss of profit, loss of business or goodwill;
 - 5.1.3. Any negligent act or omission by any of its employees, sub-contractors, agents or representatives.

6. INDEMNITY

- 6.1. The Customer hereby indemnifies Famasons and holds it harmless against all and any loss and/or destruction, and/or damage to person and/or property (whether direct or indirect, actual or consequential), injury and/or loss of life and/or limb, costs and expenses, suffered or sustained by it whilst on, or in transit to the Customer's site, in the course of, and/or consequent upon the performance by it of any of its obligations to the Customer, as well as against all and any claims, demands and actions by any person/s whomsoever for losses and/or damages to person and/or property (direct or indirect, actual or consequential), injury and/or loss of life and/or limb and/or otherwise suffered or sustained as a result of any reckless or willful act or omission by Famasons, its employees, agents and representatives in their performance of any obligation incumbent upon them pursuant to any order.
- 6.2. This indemnity shall extend to include all costs and expenses paid by Famasons to their attorneys (on an attorney and client scale) in contesting or defending any such action.

7. OWNERSHIP OF THE GOODS

- 7.1. Ownership in all Product sold shall, notwithstanding delivery, remain vested in Famasons until fully paid, and Famasons shall be entitled, without prejudice and additional to the other rights of Famasons in law, to the repossession of such Product at the risk and expense of the Customer.
- 7.2. The Customer undertakes to inform the landlord of the premises or any third party at whose premises the Goods are kept or installed, that Famasons is the owner of the Goods while any amount remains owing in respect of the Goods.

8. TRADING TERMS

- 8.1. In the event of an order being given to Famasons telephonically, or in any other form, the Customer shall be estopped from denying the validity of such order notwithstanding the fact that such order may have been given or signed by a person not authorised by the Customer.
- 8.2. The Customer agrees that the signature of any agent, contractor, sub-contractor or employee of the Customer, on Famasons's official delivery note, tax invoice, or other stationery, will constitute prima facie proof of delivery of the Product purchased.
- 8.3. Risk in Product shall pass to the Customer upon delivery. It is specifically recorded that proof of delivery of the Product purchased, need not be evidenced by a signature, and that mere physical delivery to the Customer will suffice.
- 8.4. The Customer shall notify Famasons in writing of any claims arising as a result of short-delivery or damaged stock within 48 (forty eight) hours of delivery of Product, failing which Famasons will not be liable for any claim(s).
- 8.5. Should Famasons agree to accept the return of any Product for credit, the Customer shall be liable to pay Famasons a handling charge of not less than 10% (ten percent) of the invoiced price of the Product so returned.
- 8.6. No warranty, guarantee or representation of any nature is given or implied by Famasons and all and/or any warranties, guarantees or representations are hereby expressly excluded. Under no circumstances shall Famasons be responsible for any loss of profit to the Customer or for any consequential or indirect or any other damages of any nature whatsoever, and from whatever cause arising.
- 8.7. Unless expressly stated in writing, time shall not be of the essence in any contract between the Customer and Famasons hereafter.
- 8.8. Famasons will not be in any way responsible for losses, damages or delays caused by or arising from vis major, casus fortuitus, riots, strikes, lockouts, transport or other delays, accidents, insurrection, war, national or international political unrest, pandemics, the imposition of any trade boycotts or sanctions or trade restrictions, or any other cause or contingency whatsoever beyond the control of Famasons.
- 8.9. If the execution of any order placed by the Customer is delayed by the Customer or Famasons agrees to its cancellation, Famasons, shall, without prejudice and additional to any other rights in law, be entitled to any expenses and/or loss suffered.

9. PRICE AND QUOTATIONS

- 9.1. The price of any Product sold and delivered by Famasons to Customer shall be the usual price as set out in Famasons price list at the time of the sale of the Product, available to the Customer upon request.
- 9.2. Famasons reserves the right to change the prices of the Product from time to time without prior notice to the Customer.
- 9.3. Unless otherwise expressly stated, prices are exclusive of VAT (Value Added Tax).

10. NO SET-OFF

- 10.1. The Customer shall not be entitled to withhold payment or defer any payment, nor shall it be entitled to apply set-off of any amount which it may allege is owing by Famasons to it.

11. NO NOVATION

- 11.1. Any indulgence or relaxation of whatsoever nature which Famasons may entertain or grant or any relaxation of whatsoever nature, including any indulgence or relaxation afforded to the Customer shall not constitute a novation of Famasons's rights. All such rights are strictly and absolutely reserved.

12. WITHDRAWAL OF CREDIT FACILITIES

- 12.1. Famasons's decision to grant or refuse credit facilities to any Customer and the nature of such credit facilities is at the sole discretion of Famasons.
- 12.2. Famasons reserves the right to withdraw, increase or decrease any credit facilities at any time without prior notice the Customer.

13. EXCLUSIVITY

- 13.1. Famasons Standard Terms and Conditions of Trade prevailing on the date upon which an order is placed on Famasons, read together with any special terms appearing on Famasons's invoices, will govern all transactions with the Customer. Famasons reserves the right to amend these Standard Terms and Conditions of Trade from time to time, which amendment shall become effective as of date of publication on its internet webpage www.famasons.co.za.

14. SEVERABILITY

- 14.1. It is agreed that each and every term herein contained, creating any rights and or obligations for either party, is separate, distinct and severable, the one from the other.
- 14.2. If any term herein contained is adjudicated by a competent authority to be unenforceable, invalid or unlawful, such term shall be severed from this Agreement and the remainder of the provisions shall remain in full force and effect.

15. BREACH

- 15.1. In the event of the Customer breaching any term of this Agreement and failing to remedy such breach within 7 days of receipt of written notice requiring it to do so, Famasons shall be entitled to cancel the Agreement and claim all amounts owed to it in terms of the Agreement.
- 15.2. Should the Customer resolve voluntarily to begin business rescue proceedings or any business rescue proceedings commenced against them as contemplated by the Companies Act 71 of 2008, then Famasons would be entitled to claim specific performance or to cancel the Agreement, in both instances without prejudice to any claim for damages, and in the event of cancellation, Famasons would be entitled to enter on any premises of the Customer and their clients where the Goods are situated and retake possession of the Goods.

16. INTELLECTUAL PROPERTY

- 16.1. Any and all Intellectual Property owned, developed and/or acquired by a party prior to this Agreement coming into effect shall remain the sole and exclusive property of the party who is the lawful proprietor thereof and any and all rights of the parties in terms of this Agreement, shall be subject to the other party's intellectual property rights.
- 16.2. Notwithstanding anything to the contrary, nothing herein contained shall be construed as granting to the other party any rights, whether express or implied, by license or otherwise, of the Intellectual Property rights of the other.

- 17. POPI**
- 17.1. Famasons and the Customer acknowledge their respective obligations to comply with the substantive provisions of the Protection of Personal Information Act, 4 of 2013 (hereinafter referred to as 'POPI').
- 17.2. The Customer consents that by signing and completing this form, alternatively placing an order with Famasons, to the Processing and retention of your Personal Information in terms POPI by Famasons .
- 17.3. Where Famasons and/or the Customer receives any personal information as defined in POPI, it shall ensure that it fully complies with the provisions of the Act and only deal with the personal information to fulfil its obligations under this Agreement. The personal information received shall not be further processed or disclosed without the consent of the disclosing party.
- 17.4. Famasons and the Customer therefore understand and agree, notwithstanding any contrary provision in any other agreement between the parties, that each party retains its full rights to pursue legal or equitable remedies in the event of any breach or threatened breach of the provisions dealing with POPI, and may prevent the other party, any of its agents or subcontractors, or any third party who has received records from that party from violating this Agreement by any legal means available. Each party further understands that violation of the provisions dealing with POPI may subject that party to applicable legal penalties, including those provided under POPI.
- 17.5. Within thirty (30) days after the termination of this Agreement, for whatever reason, the receiving party of either party's personal information shall return same or at the discretion of the disclosing party of such personal information, destroy such personal information, and shall not retain copies, samples or excerpts thereof.
- 17.6. In cases where the disclosing party has elected for the personal information to be destroyed, as provided for in clause 17.5 above, the receiving party shall, within ten (10) days of receiving the instruction, destroy the personal information, send a written notice confirming the destruction of personal information
- 18. CONSENT**
- 18.1. The Customer consents to Famasons and/or their duly authorized representative to make enquiries and searches about the Applicant's credit record with any credit reference agency and any other party to confirm the details in any credit application furnished to Famasons and/or in this Agreement. The Customer consents to our monitoring payment by researching your record at any credit reference agency/ies and using new information and data obtained from such credit reference agency/ies in respect of future applications.
- 18.2. Famasons and/or their representatives may also provide credit reference agency/ies with regular updates regarding how the Customer manages their account with Famasons, including failure to meet agreed terms and conditions and any information concerning your creditworthiness.
- 18.3. The Customer consents to such credit reference agency/ies, in turn, making the records and details available to other credit grantors, creditors and/or to any credit reference agency/ies.
- 18.4. Famasons and/or their authorized representative may also give this information to any person who, in Famasons opinion needs it to carry out any of Famasons's rights or duties in terms of this Agreement, or any law pertaining to the products which the Customer has requested.
- 19. ARBITRATION**
- 19.1. Save as otherwise provided in these terms and conditions and, in the event that a dispute should arise between the parties, Famasons shall be entitled to require, by written notice to the Customer, that the dispute be submitted to arbitration in terms of this clause.
- 19.2. Subject to the provisions of this clause, arbitration shall be held under the provisions of the arbitration laws of the time in force in the Republic of South Africa, provided that the arbitrator shall be a practising attorney of not less than 10 (ten) years standing, agreed upon by the parties, or failing agreement within five days after the date on which the arbitration is demanded, appointed by the Chairperson of the Legal Practice Council.
- 19.3. The arbitration shall be held at Edenvale, or any other agreed place, at a venue and in accordance with formalities and/or procedures determined by the arbitrator, and may be held in an informal and summary manner, on the basis that it shall not be necessary to observe or carry out the usual formalities and/or procedures, pleadings and/or discovery, or strict rules of evidence.
- 19.4. The arbitrator shall be entitled:-
- 19.4.1. to investigate or cause to be investigated any matter, fact or thing which he/she considers necessary or desirable in connection with the dispute and for that purpose shall have the widest powers of investigating all the books and records of either party to the dispute, and the right to take copies or make extracts therefrom and the right to have them produced and/or delivered at any reasonable place required by him/her for the aforesaid purpose;
- 19.4.2. to interview and question under oath, any representative of either of the parties;
- 19.4.3. to decide the dispute according to what he/she considers just and equitable in the circumstances;
- 19.4.4. to make such award, including an award for costs, specific performance, an interdict, damages or a penalty or otherwise as he/she in his/her discretion deems fit and appropriate, provided that should the arbitrator fail to make an award with regards to costs, the costs shall be borne equally by the parties.
- 19.5. The arbitration shall be held as quickly as possible after it is demanded with a view to its being completed within thirty days after it has been so demanded.
- 19.6. Immediately after the arbitrator has been agreed upon or nominated in terms of this clause either party shall be entitled to call upon the arbitrator to fix a date and place when and where the arbitration proceedings shall be held and to settle the procedure and manner in which the arbitration proceedings will be held.
- 19.7. Any award made by the arbitrator:-
- 19.7.1. shall be in writing and shall include reasons therefore;
- 19.7.2. shall be final and binding;
- 19.7.3. will be carried into effect; and
- 19.7.4. may be made an order of any Court to whose jurisdiction the parties to the dispute are subject.
- 19.8. This clause constitutes an irrevocable consent by the parties to any proceedings in terms hereof and no party shall be entitled to withdraw therefrom or to claim in any such proceedings that it is not bound by this clause.
- 19.9. This clause shall not preclude any party from obtaining relief by way of motion proceedings on an urgent basis from a Court of competent jurisdiction pending the decision of the arbitrator.
- 19.10. This clause shall be severable from the rest of these terms and conditions and shall remain effective notwithstanding that these terms and conditions shall for any reason whatsoever, be terminated.
- 20. CESSION OF BOOK DEBT**
- 20.1. Simultaneously with entering into any Agreement with Famasons, The Customer is deemed to have ceded as security for its indebtedness to Famasons, its successors in title and assigns, arising out of the credit facilities advanced/to be advanced to it and/or outstanding funds in respect of the sale of goods and services, all right, title and interest in and to its debtors (accounts receivable), past, present and future, to Famasons .
- 20.2. The Customer hereby warrants that it has:-
- 20.2.1. not entered into any agreement restricting or excluding the transferability of the claims that form the object of this cession;
- 20.2.2. has no knowledge of any counterclaims that may extinguish the claims that form the object of this cession;
- 20.2.3. not, prior to this cession, ceded the claims that form the object of this cession to any other person or concern, but if it should so happen that the cedent is in breach of this, then this cession shall operate as a cession of the Client's reversionary rights, including all rights of action against the prior cessionary.
- 20.3. During such time as the cession which is the subject matter of these terms and conditions remains of force and effect, The Customer agrees that it will:-
- 20.3.1. upon demand deliver, cede, transfer or negotiate to Famasons all or such of the bills of exchange, promissory notes, cheques, documents of title or other securities referred to in terms hereof as may be demanded, duly endorsed, ceded, transferred or negotiated in such form as shall render Famasons the absolute owner thereof entitled in Famasons 's own name to enforce payment thereof;
- 20.3.2. make available for inspection by Famasons or Famasons's authorised agent at any time during normal business hours all books of account, receipts and other books, papers and correspondence relating to the said book debts and the Applicant's dealings with the debtors in respect of the indebtedness of each of them to the Customer in the said business and to take possession of such books and records (of whatsoever nature) to give effect to the terms of this cession;
- 20.3.3. give Famasons all such information concerning the said debtors as may be reasonably required by Famasons to enable Famasons to recover the amount owing by each of them.
- Famasons authorises the Customer to collect the said claims in the Applicant's own name provided the said claims are collected on behalf of Famasons and provided further that Famasons shall at any time be entitled to
- 21. GENERAL**
- 21.1. Famasons' Terms and Conditions of Trade supersede and prevail over the Customer's own terms and conditions of trade which shall be regarded pro non scripto. The Customer hereby agrees that any apparent or purported or attempt to exclude, substitution or vary Famasons Standard Terms and Conditions of Trade shall not be effective and notwithstanding the fact that Famasons may accept an order from the Customer which appears or purports or attempts such exclusion, substitution or variation, Famasons Standard Terms and Conditions of Trade shall prevail.
- 21.2. The rights of Famasons arising here from shall not be capable of being varied or waived save by written document signed by Famasons who shall not be prejudiced or estopped from exercising any such rights by reason of any relaxation or indulgence which it may afford the Customer.
- 21.3. This Agreement constitutes the entire agreement between Famasons and the Customer and no other oral or written agreement concluded prior to the signature hereof, which deals with any matters dealt with in this agreement, shall be of any force or effect.