

CREDIT FACILITIES AGREEMENT

This Credit Facilities Agreement comprises two (2) indivisible parts namely:
SECTION A – CUSTOMER INFORMATION SCHEDULE;
SECTION B – TERMS AND CONDITIONS;
 which are hereinafter collectively referred to as the “Credit Facilities Agreement”

SECTION A – CUSTOMER INFORMATION SCHEDULE

We, _____
 (hereinafter referred to as the “Customer”) hereby apply for credit facilities with Frey’s Food Brands Proprietary Limited, Registration Number 2004/029849/07 (hereinafter referred to as “FFB”). In support of this application, the following information is furnished in relation to the Customer:

1. Customer Details:

1.1 Legal Entity type (please tick the applicable box)

Partnership		Close Corporation		Private Co. Pty Ltd		Public Co. Ltd		Trust	
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1.2 Registered Name: _____

1.3 Trading Name: _____

1.4 Registration Number (if registered): _____

1.5 Postal Address: _____
 _____ Code _____

1.6 Physical Address: _____
 _____ (chosen *domicilium citandi et executandi*)

1.7 E-mail Address: _____

1.8 VAT Number: _____

1.9 Telephone Number: Area Code (_____) _____

1.10 Name of Customer’s Pallet Supplier: _____

1.11 Customer’s account number with Pallet Supplier: _____

2. Trade References:

	Trade Reference:	Contact Person:	Telephone Number:	E-mail Address:
2.1				
2.2				
2.3				
2.4				
2.5				

3. Supporting Documents:

The Customer must please provide the following documentation and a signed resolution authorising the application for credit facilities in terms of this Credit Facilities Agreement:

3.1 Partnership:

- 3.1.1 Certified copy of the identity documents of each Partner;
- 3.1.2 Certified copy of the Partnership Agreement;
- 3.1.3 Certified copy of the Partnership's VAT Registration Certificate;
- 3.1.4 Certified copy of proof of the Partnership's bank details from its bankers;
- 3.1.5 Certified copy of the Partnership's bank statements, which must not older than 3 (three) months; and
- 3.1.6 Certified copy of a utility bill proving the Partnership's physical address.

3.2 Closed Corporation:

- 3.2.1 Certified copy of the identity documents of each Member;
- 3.2.2 Certified copy of the Founding Statement (Form: CK1) or Amended Founding Statement (Form: CK2);
- 3.2.3 Certified copy of the Close Corporation's VAT Registration Certificate;
- 3.2.4 Certified copy of proof of the Close Corporation's bank details from it bankers;
- 3.2.5 Certified copy of the Close Corporation's bank statements, which must not be older than 3 (three) months; and
- 3.2.6 Certified copy of a utility bill proving the Close Corporation's physical address.

3.3 Company:

- 3.3.1 Certified copy of the identity documents of each Director;
- 3.3.2 Certified copy of the Certificate of Incorporation (Form CM1) or Registration Certificate (Form: CoR 14.3);
- 3.3.3 Certified copy of the Company's VAT Registration Certificate;
- 3.3.4 Certified copy of proof of the Company's bank details from it bankers;
- 3.3.5 Certified copy of the Company's bank statements, which must not be older than 3 (three) months; and
- 3.3.6 Certified copy of a utility bill proving the Company's physical address.

3.4 Trust:

- 3.4.1 Certified copy of the identity documents of each Trustee;
- 3.4.2 Certified copy of the Trust Deed and Letters of Authority;
- 3.4.3 Certified copy of the Trust's VAT Registration Certificate;
- 3.4.4 Certified copy of proof of the Trust's bank details from it bankers;
- 3.4.5 Certified copy of the Trust's bank statements, which must not be older than 3 (three) months; and
- 3.4.6 Certified copy of a utility bill proving the Trust's physical address.

4. Required Credit Facility:

The Customer hereby requests a credit facility with FFB ("**Credit Facility**"). The Customer estimates that it requires a credit limit of: R [REDACTED]. FFB may in its sole and absolute discretion grant a Credit Facility to the Customer for the estimated credit limit amount or any other amount ("**Credit Limit**"). If FFB elects to grant the Customer a Credit Facility as contemplated in this Credit Facilities Agreement, it shall notify the Customer of the Credit Limit in writing. FFB may vary the Credit Limit and/or withdraw the Credit Facilities, which is the subject of this Credit Facilities Agreement, at any time in terms of the Terms and Conditions (**Section B**).

5. Warranty

The Customer and the person signing this Credit Facilities Agreement warrant that all the information provided to FFB in this Customer Information Schedule is true and correct. The Customer and the person signing this Credit Facilities Agreement acknowledges that FFB has relied upon the truth and accuracy of such information in determining whether or not to provide a Credit Facility to the Customer and/or the extent of the Credit Limit.

6. **Acknowledgement and Signature:**

The Customer acknowledges that the Credit Facility that may be granted to it by FFB shall be in accordance with the Terms and Conditions set out in **Section B**, which is attached hereto and on the basis of the information provided by the Customer in this **Section A**.

Signed at _____ on this _____ day of _____

As Witnesses:

1. _____

For and on behalf of the **CUSTOMER**

Who warrants by his/her signature that he/she is duly authorised hereto.

2. _____

Full Name: _____

Designation: _____

Signed at _____ on this _____ day of _____

For and on behalf of **FREY'S FOOD BRANDS PROPRIETARY LIMITED**

Who, by his/her signature hereto accepts the Customer's Application for Credit Facilities, on the Terms and Condition set out in this Credit Facilities Agreement and who, by his/her signature, warrants that he/she is duly authorised hereto.

Full Name: _____

Designation: _____

[END OF SECTION A]

SECTION B – TERMS AND CONDITIONS

IMPORTANT NOTICES AND DEFINITIONS

- A. **Important Notice:** The Credit Facility and all Product supplied to the Customer by FFB shall be supplied subject to the Terms and Conditions set out in this **Section B**.
- B. **Definitions:** In this Agreement unless the context clearly indicates a contrary intention, the following expressions shall bear the following meanings: -
- B.1. **"Agreement"** shall mean this Credit Facilities Agreement comprising **Section A** (Customer Information Schedule) and **Section B** (Terms and Conditions).
- B.2. **"CPA"** shall mean the **Consumer Protection Act, No. 68 of 2008** and its Regulations, as amended from time to time.
- B.3. **"Credit Facilities"** shall mean the credit facilities referred to in clause 4 of the Customer Information Schedule, which may be granted to the Customer in terms of this Agreement and **"Credit Facility"** shall have a corresponding meaning;
- B.4. **"Credit Limit"** shall mean the credit limit, which may be granted to the Customer in terms of clause 4 of the Customer Information Schedule;
- B.5. **"Customer"** shall mean the Customer whose details are set out the Customer Information Schedule, together with its successors in title, administrators and assigns.
- B.6. **"Customer Information Schedule"** shall mean the Customer Information Schedule (**Section A**) to which these Terms and Conditions are attached.
- B.7. **"Delivery"** means the arrival of Product at the Delivery Address and **"Deliver"** or **"Delivered"** shall have a corresponding meaning.

- B.8. **“Delivery Address”** means the address referred to in the order contemplated in clause 6.1 of these Terms and Conditions.
- B.9. **“Effective Date”** shall mean the date on which FFB notifies the Customer in writing that the Customer’s application for Credit Facilities has been accepted by FFB.
- B.10. **“Exempt Customers”** shall mean a Customer who in relation to the CPA, is a consumer described in Section 5(2)(b) of the CPA, whose asset value or annual turnover, as at the date of signature of this Agreement, equals or exceeds the threshold determined in terms of Section 6 of the CPA; and in relation to the NCA, is a consumer described in Section 4(1)(a)(i) of the NCA, whose asset value or annual turnover, together with the combined asset value or annual turnover of all related juristic persons, as at the date of signature of this Agreement, equals or exceeds the threshold value determined in terms of Section 7(1)(a) of the NCA.
- B.11. **“FFB”** shall mean Frey’s Food Brands Proprietary Limited, Registration Number: 2004/029849/07.
- B.12. **“NCA”** shall mean the **National Credit Act No. 34 of 2005** and its Regulations as amended from time to time.
- B.13. **“Non-Exempt Customers”** shall mean a Customer who in relation to the CPA, is a consumer as contemplated in the CPA whose asset value or annual turnover, as at the date of signature of this Agreement, is below the threshold determined in terms of Section 6 of the CPA; and in relation to the NCA, is a consumer as contemplated in the NCA, whose asset value or annual turnover, together with the combined asset value or annual turnover of all related juristic persons, as at the date of signature of this Agreement, is below the threshold value determined in terms of Section 7(1)(a) of the NCA.
- B.14. **“Pallets”** shall mean the wooden and plastic platforms or bases, upon which the Product is stacked for purposes of convenient loading, transportation and offloading.
- B.15. **“Parties”** shall mean both the Customer and FFB and **“Party”** shall mean either of them as the context may indicate or require.
- B.16. **“Physical Address”** shall mean the physical address nominated by the Customer in terms of clause 1.6 of **Section A**.
- B.17. **“Prime Rate”** shall mean the rate of interest charged by Nedbank Limited, per annum, compounded monthly in arrears, on unsecured, overdrawn, current accounts, to its most favoured corporate clients in the private sector, from time to time. In the event that the Customer disputes the Prime Rate of interest charged by FFB, from time to time, then the prime rate shall be certified by any Manager or Assistant Manager of any branch of Nedbank Limited, whose decision shall be final and binding on the Parties.
- B.18. **“Product”** shall mean the products sold or the services provided by FFB to the Customer, from time to time.
- B.19. **“Terms and Conditions”** shall mean the terms and conditions set out in this **Section B** of the Agreement.
- B.20. **“VAT”** means value added tax as contemplated in the **Value Added Tax Act No. 89 of 1991**, as amended (**“VAT Act”**).
- C. **Interpretation:** In this Agreement: words referring to natural persons shall also refer to bodies corporate and other legal *personae* and *vice versa*; a reference to any one gender shall include a reference to the other two genders; and reference to the singular shall include a reference to the plural and *vice versa*; any reference to “writing” in this Agreement shall include emails and facsimiles; when any number of days is referred to in this Agreement, the days shall be calculated by excluding the first day and including the last day; the clause headings in this Agreement are for reference purposes only and shall not affect the interpretation of this Agreement; the Customer hereby agrees that this Agreement, once signed by the Customer, shall forthwith replace and supersede all previous Credit Facilities Agreements signed by the Customer in regard to credit facilities granted to the Customer by FFB; the rule of interpretation that an Agreement will be interpreted against the Party responsible for the drafting of the Agreement shall not apply to this Agreement and the Parties waive any rights they have to rely on such rules; and the termination or expiry of this Agreement shall not affect those provisions of this Agreement which either stipulate that they will continue to operate after the Agreement’s expiry or termination, or which of necessity must continue to have effect after such expiry or termination, even if the clauses themselves do not expressly provide for this.

1. COMMENCEMENT AND APPLICATION OF THIS AGREEMENT

- 1.1. This Agreement shall commence on the Effective Date and shall endure until it is terminated in accordance with its terms. It is recorded that either Party may terminate this Agreement on seven (7) days’ notice to the other Party, unless terminated earlier in accordance with the terms of this Agreement.

- 1.2 FFB reserves the right to amend these Terms and Conditions from time to time. FFB shall give written notice to the Customer of such amendments via e-mail using the e-mail address in clause 1.7. FFB shall publish the amended Terms and Conditions on the FFB website (www.freys.co.za).
- 1.3 The amended Terms and Conditions shall come into effect seven (7) days after the date of transmission of the e-mail referred to in clause 1.2. FFB's failure to publish the amended Terms and Conditions on its website shall not affect the validity and/or effect of the amended Terms and Conditions, provided that such Terms and Conditions have been e-mailed to the Customer as provided for in clause 1.2.

2. TERMS AND CONDITIONS OF CREDIT

- 2.1 The granting of Credit Facilities and the extent of the Credit Limit is at the sole and absolute discretion of FFB. Should FFB grant the Customer a Credit Facility it shall notify the Customer in writing that credit has been granted and the extent of the Credit Limit.
- 2.2 Notwithstanding anything to the contrary contained in this Agreement, FFB shall be entitled to reduce the Credit Limit and/or withdraw any Credit Facilities granted to the Customer, at any time, by giving the Customer seven (7) days written notice to this effect. A Customer shall be entitled to require FFB to reduce the Credit Limit and/or withdraw any Credit Facilities granted to it, by giving FFB written notice to that effect.

3. PAYMENT

- 3.1 Unless otherwise agreed by the Parties in writing, all amounts payable to FFB for Product shall be paid within seven (7) days from the date of issue of any invoice by FFB ("**Due Date**"), subject to the provisions of clause 12.1 below. All payments by the Customer to FFB under these Terms and Conditions shall be paid, in full, without deduction, demand or set-off (but subject to a Non-Exempt Customer's right to set-off in terms of Regulation 44(3)(b) of the CPA), directly into FFB's bank account, as nominated by FFB, from time to time in writing.
- 3.2 If any payment is not made by the Due Date, then, without prejudice to any other rights FFB might have in that regard, interest shall accrue on the outstanding amount at the Prime Rate plus two percent (2%), per annum, reckoned from the Due Date until the actual date of such payment, both dates inclusive. Any amounts received from the Customer shall be allocated firstly towards payment of any legal costs, then to any collection commission, then to any interest accrued and lastly in reduction of the purchase price in respect of the Product (commencing first with the oldest amounts due).
- 3.3 Notwithstanding anything to the contrary contained in this Agreement, including clause 11 (*force majeure*), the Customer agrees that it may not rely on an event of *force majeure, vis maior, casus fortuitus* or any other similar event or reason for not making payment of the full amount due to FFB in terms of this Agreement.
- 3.4 All discounts and/or rebates offered in writing by FFB to the Customer, are conditional upon and subject to the Customer making payment of the amounts due to FFB on or before the Due Date. Any failure by the Customer to make payments of amounts due at the Due Date will result in the discounts and/or rebates lapsing and not being applicable.

4. ORDERS AND PRICE

- 4.1 When the Customer requires Product, it shall place a written order to this effect with FFB at least seven (7) days prior to the date on which it requires the Product. The order shall only be effective once FFB has accepted such order in writing, however, delivery of the product by FFB shall constitute acceptance by FFB. FFB has the sole and absolute discretion whether or not to accept an order from a Customer.
- 4.2 The price of Product ordered from FFB shall be the price of the Product on the date on which such Product is ordered and not the date on which it is Delivered. It shall be the Customer's responsibility to ascertain from FFB what the prevailing prices are for the Product when placing orders. The price stated on an invoice issued to the Customer by FFB in respect of Product shall be *prima facie* proof of the price of the Product on the date that such Product was ordered. In the event that the Customer disputes the price stated on an invoice issued FFB, the Customer shall bear the onus of proving that such price is incorrect.

5. EXPORT ORDERS

- 5.1 All orders to be Delivered to an address outside the Republic of South Africa (“Destination Country”) shall be subject to FFB obtaining and maintaining the necessary export licenses and consents required to fulfil such orders. FFB shall be entitled but not obliged to claim any costs which it incurs in obtaining such export licenses and consents from the Customer. It shall be the Customer’s responsibility to obtain and maintain the necessary import permit and authorisations required to import Product to such Destination Country in each instance.
- 5.2 The Customer shall be liable for all costs incurred and damages suffered by FFB as a result of the Customer not being in possession of the aforesaid import permits or authorisations.
- 5.3 The Customer hereby indemnifies and holds FFB harmless to the full extent allowed in law against any and all claims by any person whatsoever for any damages, real or alleged, which may be sustained by such person by reason of the Customer not being in possession of the aforesaid import permits or authorisations.

6. DELIVERY, OWNERSHIP AND RISK

- 6.1 Product ordered from FFB shall be Delivered to the Delivery Address specified in the Customer’s order. FFB shall be entitled to raise a delivery fee to cover the costs in regard to the Delivery, provided that the Customer is given prior notification of such delivery fee. If, for whatever reason, the Product cannot be Delivered at the Delivery Address, through no fault of FFB (“Failed Delivery”), the Customer shall be liable for all additional costs associated with such Failed Delivery, subject to the CPA to the extent that it applies to Non-Exempt Customers.
- 6.2 Delivery dates and times are estimates only and whilst FFB shall use its reasonable endeavours to Deliver on the requested dates and times, FFB shall not be responsible for any losses or damages of any nature whatsoever suffered by the Customer should Delivery not be made on the requested date or time, save where the Customer is a Non-Exempt Customer and (i) the delay is as a result of FFB’s gross negligence; and (ii) the time when the Delivery is made is unreasonable or unreasonably long in the circumstances.
- 6.3 Risk and Ownership in and to Product shall pass from FFB to the Customer on acceptance of the Delivery at the Delivery Address. Acceptance of the Delivery shall be deemed to have occurred once the delivery note in regard to such Delivery is signed by the Customer. The Customer shall take Delivery of the Product within two (2) hours of arrival at the Delivery Address, failing which the Customer shall be responsible for demurrage charges.
- 6.4 In the event that any Product is Delivered to a Customer, which Product is defective, or not to specification or which does not comprise of the Product ordered by the Customer (“Non-Conforming Product”), then the Customer shall, immediately upon such Non-Conforming Product coming to its attention, notify FFB in writing thereof and permit FFB or its duly authorised representative an opportunity, to inspect such Non-Conforming Product within the forty eight (48) hour period following such written notification. Where it occurs that the Customer’s complaint is valid, then: -
- 6.4.1 FFB shall collect the Non-Conforming Product from an address as is agreed between the Parties in writing, and replace such Non-Conforming Product with Product which conforms to the Customer’s duly accepted order. Non-Exempt Customers shall have the right to elect whether FFB is to replace the Non-Conforming Product or whether FFB is to provide the Non-Exempt Customer with a refund for the Non-Conforming Product;
- 6.4.2 the cost of collecting the Non-Conforming Product and replacing same, with Product which conforms to the Customer’s duly accepted order, shall be borne by FFB, except in respect of Product which is returnable in terms of section 20(2)(a) of the CPA which shall be dealt with in terms of that section, to the extent that the CPA applies to Non-Exempt Customers; and
- 6.4.3 the Customer shall have no claim of any nature against FFB, including but not limited to damages or losses in respect of such Non-Conforming Product except to the extent provided in the CPA, to the extent that it is applicable.

7. PALLETS

- 7.1 Where FFB delivers Product using Pallets, the Customer shall provide FFB with its account number with Chep SA Proprietary Limited (or such other Pallet provider) to which Pallets can be transferred.

7.2 Where FFB delivers Product using Pallets and the Customer does not have an account with Chep SA Proprietary Limited (or any other Pallet provider) the Customer shall provide FFB with an empty Pallet on a 'one-for-one' exchange basis after each Delivery. Pallets exchanged by the Customer shall be in the same or a similar condition to the Pallet supplied by FFB. The Customer is required to notify FFB in writing immediately that a damaged Pallet comes to its attention. Should the Customer fail to provide FFB with an empty Pallet on a 'one-for-one' exchange basis, FFB shall be entitled to claim the replacement cost and/or the rental cost of the Pallet, which amount shall become immediately due and payable on demand.

8. PRODUCT RECALL

8.1 In the event that FFB institutes a recall of any Product supplied by it to the Customer, then the Customer undertakes to co-operate, in every reasonable respect with FFB in the recall process. All reasonable instructions from FFB may include (but shall not be limited to) directions as to the proper storage and handling of the Product, avoiding cross-contamination in respect of the Product and ensuring that facilities and delivery vehicles where the Product is or was stored is free and clean of any contaminant.

8.2 Should the Customer fail, neglect or refuse to carry out such reasonable instructions issued by FFB, FFB may carry out the Customer's obligations without first having to place the Customer in breach in terms of clause 12. FFB may recover the costs of carrying out the Customer's obligations, from the Customer, without prejudice to any other remedies, which FFB may have against the Customer in respect of its breach of clause 8.1. Such costs shall be payable by the Customer to FFB on written demand.

9. INTELLECTUAL PROPERTY AND PERMITTED USE

All copyright, patent rights, trademarks, registered design or any application for registration of the same, database rights, design rights, rights in trade, business or domain names, rights in trade dress, rights in inventions, recipes, rights in confidential information and know-how, whether registered or unregistered, or any similar or equivalent rights in any part of the world and all other intellectual property rights in and to the Product shall at all times remain vested in FFB or its licensors.

10. LIMITATION OF LIABILITY AND INDEMNITIES

10.1 Notwithstanding anything to the contrary contain in this Agreement, the Customer shall have no claim against FFB for any loss or damages, of any nature, occasioned by any defect in any Product supplied, or any failure to provide adequate instructions in respect of any hazards that might arise from the use or incorrect use of the Product, save to the extent that FFB is necessarily liable for such loss or damages in terms of Section 61 of the CPA, as applicable to both Exempt and Non-Exempt Customers, or any other provision of the CPA as applicable to Non-Exempt Customers.

10.2 FFB shall not be liable for any damages to Product caused by improper or inadequate storage, improper handling, tampering with such Product by parties not authorised thereto by FFB; any negligence of the Customer or a third party in the use and/or storage of the Product; and/or the use of the Product by the Customer or any third party in applications for which they are not recommended or intended; save to the extent that FFB is necessarily liable for such loss or damage in terms of the CPA to the extent that it is applicable. The Customer hereby indemnifies and holds FFB harmless to the full extent allowed in law against all or any claims by any person for any damages, real or alleged, as contemplated in this clause 10.2, save where the Customer is a Non-Exempt Customer and where such liability is incurred by FFB to third parties as contemplated in Regulation 44(3)(e) of the CPA.

10.3 To the fullest extent possible in law, FFB shall not, under any circumstances, be liable for any indirect or consequential losses or damages suffered by the Customer in the purchase, storage, sale, distribution or use of the Product, subject to Section 61 of the CPA as applicable to both Exempt and Non-Exempt Customers, or any other provision of the CPA as applicable to Non-Exempt Customers.

10.4 The Parties agree that notwithstanding anything to the contrary contained in the Agreement, the total cumulative amount of any and all claims, which the Customer may have against FFB arising out of this Agreement shall be limited to an amount not exceeding twice the amount of the Credit Limit granted to the Customer by FFB from time to time except to the extent that such limitation may be construed as unlawfully infringing Section 61 of the CPA as applicable to both Exempt and Non-Exempt Customers, or any other provision of the CPA as applicable to Non-Exempt Customers or any other law in the Republic of South Africa.

- 10.5 Subject to the provisions of the CPA to the extent that it applies, in addition to any other indemnities provided by the Customer in favour of FFB in terms of this Agreement, the Customer hereby indemnifies and holds FFB harmless against any loss and/or claim for damages howsoever arising (including consequential damages and claims by third parties) that the Customer or any third party may suffer as a result of the Customer breaching any of the provisions of this Agreement and/ or as a result of the Customer's fraud or wilful default or negligence.
- 10.6 In each instance that any losses or damages may be claimed by the Customer in terms of this Agreement or in law, the Customer shall bear the onus of proving both liability and quantum in respect of any such losses or damages, except to the extent that same is contrary to the common law, the CPA or any other statute in force.
- 10.7 The Customer shall notify FFB of any claim, which it may have against FFB arising out of this Agreement, as soon as it would be reasonably possible for the Customer to do so, acting diligently and with all possible expedition.
- 10.8 In addition to the other indemnities given in terms of this Agreement, subject to the provisions of the CPA to the extent that it is applicable, the Customer indemnifies and holds FFB harmless against all direct claims, losses, damages, costs, charges, liabilities, penalties, interest, fines and expenses of whatsoever nature (including legal and other professional charges and expenses on an attorney and client scale), suffered or incurred by FFB under contract (including but not limited as a result of the Customer's breach of its obligations in terms of this Agreement) or delict; or any negligent, fraudulent or wrongful act or omission by the Customer (including any other party that the Customer would be vicariously liable for in law in relation to this Agreement); except to the extent that the loss, damage, liability, cost or expense is directly attributable to the fraud or wilful default or negligence of FFB.

11. FORCE MAJEURE

In the event that FFB is prevented from carrying out any of its obligations in terms of this Agreement, whether as a result of an act of God, industrial action of any kind, machinery breakdown, damage to or destruction or contamination of FFB's manufacturing plant, facilities or any part thereof (including but not limited to *listeriosis* contamination), fire, riot, war (whether declared or not), power and water outages or shortages, labour disputes, labour strikes, embargos, import or export controls, international trade restrictions, any order by any local or international authority, any Court Order or a requirement of any competent authority (including, *inter alia*, any new Legislation or any amendments to any existing Legislation coming into operation, at any time, which adversely affect FFB's ability to perform in terms of this Agreement), the outbreak of any disease in humans or animals (whether a notifiable disease or otherwise), or any other circumstances whatsoever which are not within the reasonable control of FFB (all of which for the purposes of this clause, are referred to as an "event of *force majeure*"), then: -

- 11.1 where such event of *force majeure* endures for a period in excess of 30 (thirty) days, then the Customer shall be entitled to cancel any orders for Product which then remain undelivered and, at its own cost and risk, to procure alternative Product from an alternative supplier; and
- 11.2 to the extent that and for as long as FFB is so prevented from performing its obligations in terms of this Agreement, as a result of the existence of an event of *force majeure*, it shall be excused from performing such obligations and the Customer shall have no claim against FFB in respect of any losses or damages it may suffer as a result thereof, except to the extent required in terms of the CPA where applicable to Non-Exempt Customers.

12. BREACH

- 12.1 Notwithstanding anything to the contrary contained in this Agreement, if the Customer commits a breach as described in this clause 12, then all amounts payable by the Customer to FFB shall become immediately payable without further notice to the Customer.
- 12.2 Notwithstanding anything to the contrary contained in this Agreement, if the Customer does not pay all amounts due to the FFB on or before the Due Date for payment, then: FFB reserves the right to give the Customer three (3) days' notice, via e-mail using the e-mail address in clause 1.7 of the Customer Information Schedule, to make payment of all the amounts due as contemplated in clause 12.2, failing which FFB may institute legal proceedings against the Customer for all such amounts due, without prejudice to any of its other rights

in terms of this Agreement or in law; and/or FFB may unilaterally suspend the supply of Product to the Customer; and/or FFB may unilaterally cancel this Agreement on written notice to the Customer.

- 12.3 In addition to the provisions of clauses 12.1 and 12.2 above, a Party ("**Defaulting Party**") shall be in default or breach of its obligations in terms of this Agreement if it: commits any other breach of any of the terms of this Agreement and fails to remedy same within a period of seven (7) days from the date of written notification to that effect from the Aggrieved Party; or allows any judgements against it to remain unsatisfied for a period of ten (10) days; or compromises or attempts to compromise any debt or debts with any of its creditors; or is provisionally or finally sequestrated, liquidated or wound-up or placed under business rescue or curatorship; or in the case of the Customer, the Customer permits any lien, hypothec, notarial bond, pledge, other security or interest to be created over the Product, or abandons the Product or relinquishes possession of the Product, or allows the Product to be seized under any legal process issued against the Customer prior to discharging all of its obligations arising from this Agreement.
- 12.4 Upon the Defaulting Party being in default as contemplated in clause 12.3, or should the Aggrieved Party be otherwise entitled in law, the Aggrieved Party shall, without prejudice to any other rights that it may have at law or in terms of this Agreement be entitled to: cancel any agreement (including but not limited to this Agreement) in regard to the supply of any Product or the balance of any Product by FFB to the Customer, the supply of which Product may then be outstanding or incomplete; where the Aggrieved Party is FFB, suspend any and all supply of or access to Product in respect of the Customer; where the Aggrieved Party is FFB, suspend or withdraw any Credit Facilities granted to the Customer on written notice to the Customer, subject to section 118(3) of the NCA to the extent that it is applicable to Non-Exempt Customers; claim specific performance from the Defaulting Party of any or all of the obligations owed by the Defaulting Party to the Aggrieved Party as set out in this document; in any of the instances contemplated in this clause 12.4 above, claim damages from the Defaulting Party.
- 12.5 Exceeding the Credit Limit is a material breach of this Agreement and shall entitle FFB to unilaterally and summarily withdraw the Credit Facility on written notice to the Customer.
- 12.6 A certificate issued by the financial manager or any director of FFB, whose authority need not be proved, shall be sufficient proof of the Customer's Credit Limit and/or indebtedness to FFB for any purpose whatsoever arising including but not limited to any dispute, legal action or application (whether for summary judgement, provisional sentence or for any other reason).
- 12.7 If this Agreement terminates or is cancelled for any reason whatsoever, then, notwithstanding anything to the contrary herein, the full amount then outstanding by either Party to the other Party shall immediately be due and payable.
- 12.8 Should the Aggrieved Party take any legal action against the Defaulting Party as a result of a breach of this Agreement, the Aggrieved Party shall be entitled to claim legal costs from the Defaulting Party on an 'attorney-and-client' scale, irrespective of whether or not Summons has been issued or an Application has been launched

13. DOMICILIUM AND NOTICES

- 13.1 The Customer chooses as its *domicilium citandi et executandi* ("domicilium") for all purposes arising from or pursuant to this Agreement, the Physical Address as defined in clause B.16 of these Terms and Conditions. FFB chooses as its domicilium for all purposes arising from or pursuant to this Agreement, the physical address: The CEO, **Frey's Food Brands (Pty) Ltd.**; 1 Eddie Hagen Drive, Cato Ridge, KwaZulu-Natal. Each Party shall be entitled from time to time, by written notice to the other Party, to vary its domicilium to any other address within the Republic of South Africa which is not a post office box or poste restante.
- 13.2 Any notice given by one Party ("First Party") to the other Party ("Second Party") which is delivered by hand during the normal business hours of the Second Party at the Second Party's *domicilium* for the time being shall be rebuttably presumed to have been received by the Second Party at the time of delivery.
- 13.3 Notwithstanding anything to the contrary in this clause 13, a written notice or other communication actually received by any Party is adequate written notice or communication to it notwithstanding that the notice was not sent to or delivered at its domicilium.

14. REQUEST FOR CUSTOMER INFORMATION

The Customer agrees that FFB may, at any time during the currency of this Agreement, request in writing, any information and documentation which FFB may reasonably require for the purposes of determining whether the Customer is a Non-Exempt Customer or an Exempt Customer as defined in this Agreement. The Customer undertakes to provide all such information and documentation within three (3) days of receiving a written notice from FFB requesting such information and documentation.

15. DATA PROTECTION AND PROCESSING OF PERSONAL INFORMATION

The Customer expressly consents to FFB collecting and processing its Personal Information (as defined in the **Protection of Personal Information Act, No. 4 of 2013**), when processing orders made by the Customer; to draw statistics and user reports to identify potential markets and trends; to determine current and future customer requirements and to develop new products and services, which shall be done subject to FFB's Privacy Policy, a copy of which is available to the Customer on written request to FFB.

16. DISPUTE RESOLUTION: ARBITRATION

16.1 Should any dispute arise between the Parties in connection with this Agreement, the Parties hereby consent to the arbitration being dealt with on an urgent basis in terms of the rules of the Association of Arbitrators (Southern Africa) ("**AASA**"). The arbitration will be held in Durban, KwaZulu-Natal, South Africa. The arbitrator shall be a practising senior advocate of at least 15 (Fifteen) years standing.

16.2 The decision of the arbitrator will be final and binding on the Parties and may be made an order of the High Court at the instance of a Party. The costs of such arbitration will be borne by the unsuccessful Party or by both the Parties in such proportions as determined by the arbitrator in his sole discretion.

16.3 The provisions of this clause 16 shall be severable from the rest of this Agreement and shall remain in effect despite the termination of or invalidity for any reason of this Agreement.

16.4 This clause will, regardless of whether a Party to this Agreement has demanded that a dispute be determined in accordance with this clause 16, not preclude any Party from obtaining any relief on an urgent basis from a court of competent jurisdiction.

16.5 Despite the reference of a dispute to arbitration under this clause 16, the Parties shall continue to perform their obligations under this Agreement.

17. GENERAL

17.1 If any provisions of this Agreement are found to be unlawful, unenforceable or invalid, it shall be deemed to be separate and severable from the remaining provisions of this Agreement and to the extent that same is unlawful, unenforceable or invalid, be deemed to *pro non scripto*.

17.2 This Agreement constitutes the whole agreement between the Parties and no Party shall be bound by any undertakings, representations, warranties and promises or the like not recorded therein or otherwise agreed in writing and signed by the Parties. Subject to FFB's right to amend these Terms and Conditions in terms of clause 1.2 and 1.3 above, no variation of this Agreement, addition to this Agreement or agreed cancellation of this Agreement shall be of any force or effect unless in writing and signed by both of the Parties.

17.3 No extension of time or other indulgences granted by one Party to the other Party in respect of its obligations will constitute a waiver or novation of or otherwise affect any of the first Party's rights to enforce strict compliance with the terms of this Agreement.

17.4 The validity, interpretation and all other matters arising out of this Agreement shall be governed by the laws of the Republic of South Africa.

17.5 The Customer may not cede or assign any of its rights or delegate any of its obligations under this Agreement without the prior written consent of FFB, which consent may be withheld.

17.6 The Customer acknowledges that it has not been induced to sign this Agreement by any representations by FFB or by any third parties and confirms that it enters into this Agreement freely and voluntarily. Each Party acknowledges that it has been free to secure independent legal and other advice as to the nature and effect of all of the provisions of this Agreement and that it has either taken such independent legal or other advice or dispensed with the necessity of doing so. [END OF SECTION B]