

ILLOVO SUGAR (SOUTH AFRICA) PROPRIETARY LIMITED
STANDARD CONDITIONS OF SALE
SUGAR & SYRUP

1. DEFINITIONS

- 1.1. In these Conditions –
 - 1.1.1. “the Company” – means Illovo Sugar (South Africa) Proprietary Limited;
 - 1.1.2. “the Purchaser” - means the person, firm, partnership, company, close corporation, association or other entity which is the Applicant in terms of the Customer Credit Application form of which these Conditions form part;
 - 1.1.3. “these Conditions” - means these General Conditions of Sale;
 - 1.1.4. “Consumer Protection Act” – means the Consumer Protection Act 68 of 2008, and the regulations thereunder, as amended from time to time;
 - 1.1.5. “the goods” – means all goods sold by the Company, including, but not limited to, sugar, syrup and/or speciality sugars;
 - 1.1.6. “National Credit Act” – means the National Credit Act 34 of 2005, and the regulations thereunder, as amended from time to time.
- 1.2. Unless inconsistent with the context, words relating to any gender shall include the other genders, words relating to the singular shall include the plural and vice versa and words relating to natural persons shall include associations of persons having corporate status by statute or common law.

2. CONTRACT

- 2.1. These Conditions shall apply to all sales of goods by the Company to the Purchaser, and no other conditions shall be binding on the parties notwithstanding that such conditions may be annexed to, contained in or incorporated by reference in, any documents exchanged between the Company and the Purchaser and purport to regulate the terms of any purchase by the Purchaser. Save as set out herein, no warranties, representations or undertakings shall be binding upon the Company.
- 2.2. If any order or other document relating to any contract between the Company and the Purchaser contains any condition which conflicts with any of these Conditions, then unless specifically recorded in writing to the contrary, these Conditions shall prevail.
- 2.3. The Purchaser shall not be entitled to cede or assign any of its rights and obligations hereunder without the prior written consent of the Company.
- 2.4. Any of the goods re-sold by the Purchaser shall be sold and delivered in their original packaging and shall not be re-packed, nor shall the original packaging be altered in any manner, except for repackaging of breakages.
- 2.5. The Company shall be entitled, in its sole discretion, at any time to decrease, restrict, limit or cancel any credit arrangements or facilities granted to the Purchaser and/or to require the Purchaser to furnish security to the satisfaction of the Company for the payment of any or all amounts due in terms of any contract between them.

3. ORDERS AND MINIMUM QUANTITIES

- 3.1. The Company reserves the right to accept or refuse any order from the Purchaser, in whole or in part, and to withdraw from any order at any time prior to delivery of the goods ordered.
- 3.2. Upon acceptance by the Company of the Purchaser's order a contract of sale upon the terms set forth in these Conditions shall be deemed to have been concluded between the Purchaser and the Company in respect of the goods which the Company has agreed to supply.
- 3.3. Each order that is accepted by the Company shall constitute a separate and distinct sale in respect of the goods forming the subject matter of such order.

4. **PRICE**

- 4.1. The purchase price of any goods sold to the Purchaser shall be the Company's usual price ruling at the date upon which the Company accepts the Purchaser's order for any goods, unless otherwise agreed in writing by the Company at the time of acceptance of the Purchaser's order.
- 4.2. Any prices quoted by the Company shall be deemed to be inclusive of VAT and transport charges, unless stated to the contrary in writing, and no quote shall be binding on the Company unless reduced to writing and signed by a duly authorised representative of the Company.

5. **DELIVERY AND RISK**

- 5.1. The point of dispatch of any order of goods shall be entirely at the discretion of the Company.
 - 5.2. The risk in and to the goods shall pass to the Purchaser upon delivery thereof.
 - 5.3. The Company shall have the right to deliver the goods forming the subject of any order in such quantities and by way of such number of separate deliveries as the Company in its discretion may determine.
 - 5.4. Insofar as delivery of goods is concerned, time shall not be of the essence. Any delay in delivery, for any reason whatsoever, shall not render the sale subject to cancellation by the Purchaser and the Company shall not be liable to the Purchaser, whether for damages or any other claim.
 - 5.5. The Company's delivery note signed or counter-signed by any person purporting to be an employee or agent of the Purchaser, or any carrier, shall for all purposes be deemed to be accurate in all respects and binding on the Purchaser unless the Purchaser is able to prove fraud or dishonesty on the part of the Company.
 - 5.6. Without prejudice to any other rights that the Company may have in terms of these Conditions, or according to law, the Company shall have the right:-
 - 5.6.1. to suspend all further deliveries of goods to the Purchaser and to cancel all sales of goods already concluded If any amount due by the Purchaser to the Company is not paid on due date;
 - 5.6.2. to suspend deliveries under any contract at any time if:-
 - 5.6.2.1. in its sole discretion it considers that the amount owing by the Purchaser (whether due or not) has reached the limit to which it is prepared to allow the Purchaser credit; or
 - 5.6.2.2. it comes to its notice that the Purchaser's financial position has deteriorated; or
 - 5.6.2.3. it no longer considers the Purchaser to be creditworthy; or
 - 5.6.2.4. the Purchaser disputes that any contract for the sale of goods is upon the terms set forth in these Conditions.
 - 5.7. The Company shall be deemed to have fulfilled its contractual obligations in respect of any delivery notwithstanding that the quantity delivered may deviate by up to 5% more or less than the quantity specified in the order and in such event the Purchaser shall pay for the quantity actually delivered.
 - 5.8. No claim of any nature will be entertained by the Company unless notice of a claim is lodged in writing with the Company within thirty (30) days of delivery, and failing such notice the Purchaser's claim shall be deemed to have been waived, abandoned and of no force and effect against the Company.
- #### 6. **PAYMENT**
- 6.1. Unless otherwise agreed in writing by the Company:-
 - 6.1.1. the purchase price in respect of sugar shall be payable by the Purchaser within seven (7) days after the date of the Company's first statement of account in respect of such sugar, and in respect of all other goods, within thirty (30) days after the date of such statement, whether or not such statement is received by the Purchaser, provided it is posted in the ordinary course of business;
 - 6.1.2. interest on overdue amounts shall be charged to the Purchaser at a rate of 2% per annum above the publicly quoted prime overdraft interest rate charged from time to time by the Company's bankers on monies lent and advanced on unsecured overdraft, provided that if such rate exceeds the highest permissible rate in terms of the National Credit Act, then the latter rate will apply.

- 6.2. The acceptance by the Company of any series of post-dated cheques, promissory notes or other bills of exchange from the Purchaser shall be without prejudice to the Company's rights in terms of these Conditions. The risk in any cheque or other negotiable instrument or payment sent by the Purchaser by post or any other means of delivery, shall remain with the Purchaser until such cheque or instrument has been received by the Company and deposited into the latter's bank account.
- 6.3. No amount may be deducted from, or set-off against, any invoice or statement without the Company's prior written authorisation, nor shall the Purchaser be entitled to withhold payment of any amount by reason of any alleged claim against the Company.
- 6.4. If the Purchaser fails to make any payment to the Company on due date, then the full balance of all amounts then owing by the Purchaser to the Company, from whatever cause arising, shall forthwith become due and payable.
- 6.5. A certificate signed by any director or manager of the Company (whose authority need not be proved) stating the amount of the Purchaser's indebtedness to the Company at any time (including interest, costs and the rate of interest) shall constitute prima facie proof of the amount of the Purchaser's indebtedness to the Company and shall be valid as a liquid document against the Purchaser in any competent Court for the purposes of obtaining provisional sentence, summary judgment or any other judgment thereon.

7. **OWNERSHIP**

- 7.1. Ownership of the goods shall remain vested in the Company until the purchase price thereof and all other amounts owing by the Purchaser to the Company shall have been paid in full.
- 7.2. The Purchaser shall:-
- 7.2.1. give written notice to its landlord of the Company's rights of ownership in the goods; and
- 7.2.2. immediately notify the Company if any third party attempts to assert any rights in and to the goods or articles aforesaid, or if the goods are attached or taken under lien by any third party.

8. **BREACH**

If:

- 8.1. the Purchaser fails to pay any amount due to the Company on due date; or
- 8.2. any cheque, promissory note or other bill of exchange given to the Company is dishonoured by non-payment; or
- 8.3. application is made, or a resolution is passed, for the sequestration or winding-up or judicial management of the Purchaser, whether provisionally or finally; or
- 8.4. the Purchaser commits an act of insolvency; or
- 8.5. the Purchaser proposes or enters into any compromise with any of his/its creditors; or
- 8.6. the Purchaser fails to satisfy any judgment granted against him/it within seven (7) days after the date of the judgment; or
- 8.7. the Purchaser breaches any other provision of these Conditions;

then notwithstanding any earlier agreement for credit, the Company shall be entitled, without prejudice to any other rights it may have in terms hereof or according to law, to cancel any contract relating to the sale of goods to the Purchaser, to re-possess the goods, to claim from the Purchaser immediate payment of any monies due by the Purchaser and/or to claim damages.

9. **FORCE MAJEURE**

- 9.1. If the Company is prevented from fulfilling its obligations in terms of any contract with the Purchaser due to force majeure or other circumstances entirely beyond its control (including, without limitation, strikes, lock-outs, riots, acts of God, fire, drought, pestilence, lightning, storm, flood, earthquake, explosion, war or warlike acts, civil insurrection, plant breakdown, government interference or restrictions), the Company shall be relieved of performance of its obligations to the extent that it is prevented from doing so for the duration of the intervening circumstance.

- 9.2. If the Company wishes to claim relief on the grounds of the said circumstance it shall notify the Purchaser in writing without delay of the intervention and shall use its best endeavours to remove or avoid the impediment as soon as possible.

10. GENERAL

- 10.1. No variation or cancellation of any of these Conditions shall be binding unless in writing and signed by the Company. The Company, however, reserves the right to amend these Conditions from time to time by written notice to the Purchaser, who shall, after receipt thereof, be bound thereby if the Purchaser thereafter continues to purchase goods from the Company.
- 10.2. No relaxation, indulgence or extension of time which the Company may grant at any time in regard to the carrying out of the Purchaser's obligations in terms of any contract shall prejudice, or constitute a novation or a waiver of, any of the Company's rights hereunder or according to law.
- 10.3. If any of the terms of these Conditions is held to be invalid, illegal or unenforceable, whether in whole or in part, such invalidity, illegality or unenforceability shall not prejudice the effectiveness of the remainder of these Conditions, and shall be severable therefrom.
- 10.4. Any samples supplied to the Purchaser are supplied solely for information and in no way import any express or implied conditions or warranties as to the quality, description or fitness for purpose of the goods and the Purchaser shall be deemed to have satisfied itself as to such matters prior to ordering the goods.
- 10.5. The Company shall not be liable under any circumstances whatever for any loss of profit or any indirect or consequential damages arising out of any breach by the Company of any of its obligations in relation to any sale of goods to the Purchaser or any cancellation of a contract of sale, and, in any event, its liability to the Purchaser shall not exceed the purchase price of the goods.
- 10.6. If the Company instructs attorneys to recover money or goods from the Purchaser, the Purchaser shall be liable for and pay all legal costs incurred by the Company on the attorney and own client scale including any collection commission.
- 10.7. These Conditions shall be governed by, and interpreted according to, the laws of the Republic of South Africa. The Purchaser consents to and submits itself to the exclusive jurisdiction of the Courts of the Republic of South Africa. At the option of the Company any claim against the Purchaser may be brought in any Magistrates' Court in the Republic of South Africa having jurisdiction, notwithstanding that such claim may exceed the jurisdiction of the Magistrates' Court, and the Purchaser hereby consents and submits to the jurisdiction of such Court.

11. NATIONAL CREDIT ACT AND CONSUMER PROTECTION ACT

If any of the provisions of the National Credit Act or the Consumer Protection Act are applicable in relation to any transactions between the Company and the Purchaser incorporating these Conditions, then:-

- 11.1. any provision of these Conditions which may be rendered unlawful by any applicable provisions of such Acts shall be deemed to have been severed from these Conditions to the extent of such unlawfulness;
- 11.2. these Conditions shall not exempt the Company from any liability which may not lawfully be excluded in terms of such Acts; and
- 11.3. these Conditions shall not be construed as depriving the Purchaser of any right that the Purchaser may have in terms of any applicable provisions of such Acts.

12. DOMICILIUM

The Purchaser hereby chooses as its domicilium citandi et executandi, for the service of all notices and processes to be given and served in pursuance hereof and in terms of any contract of sale at the address appointed as its street address in the Customer Credit Application form embodying these Conditions.