



STANDARD TERMS AND CONDITIONS OF CONTRACT/SALE

These are conditions which apply to every contract, for the sale of goods/products by Nutri SA to any Buyer except to the extent to which they may be excluded or modified with Nutri SA's consent.

1. ACCEPTANCE, WAIVER, MODIFICATION, INTERPRETATION AND CONSTRUCTION

Orders that are accepted, and contracts that are formed, are accepted or formed at Nutri SA's offices, on the basis of and strictly limited to these standard terms and conditions of sale of Nutri SA (Pty) Ltd Company (herein "Nutri SA"), as amended or modified from time to time (these "Terms"), which Buyer is deemed to consent to as a condition thereto and which shall control over any contrary or additional terms and conditions on any purchase order or other document of Buyer, which additional terms and conditions are hereby expressly objected to and to which Nutri SA shall not be bound. Waiver of any term or condition of sale shall not constitute waiver of any other term or condition or legal remedy of Nutri SA. Any act by Buyer of confirmation of any transaction contemplated hereby, including any order issued to Nutri SA (whether in response to a quote of Nutri SA or otherwise), shall constitute Buyer's acceptance of these Terms. Neither the failure of Nutri SA to respond to any terms or conditions contained in Buyer's order nor the commencement by Nutri SA of any work relating to the supply of goods/products shall be construed as Nutri SA's assent to any terms and conditions which are additional to or different from, or which modify or extend, these Terms.

No modification of any order or contract shall be binding unless in writing, signed by both parties hereto. Orders and contracts shall be interpreted in accordance with and the construction hereof shall be governed by, the laws of South Africa. Captions as used herein are for convenience or reference only and shall not be deemed or construed as in any way limiting or extending the meaning of any terms and conditions contained herein. The International Convention on the Sale of goods/products shall have no application to any sales of goods/products hereunder.

2. PRICE

Price lists and specifications issued by Nutri SA from time to time are for general information purposes only and do not constitute offers for sale.

Nutri SA's prices are not subject to any discounts unless expressly agreed in writing by Nutri SA.

The acceptance of an order is subject to the proviso that the goods/products will be supplied at prices ruling at the date of order acceptance unless specifically agreed otherwise in writing. Prices established in a foreign currency shall be subject to the closing ruling Rate of Exchange at the date of order acceptance of the goods/products sold.

Where no price has been quoted (or a quoted price is no longer in effect), the price of any goods/products sold to Buyer shall equal the price in effect on the date of order placement, plus a processing adder specified by Nutri SA. Any order accepted requiring special manufacturing processes, inspection, specified weight, packaging, test results, certification or other similar items or matters is subject to additional charges.

Unanticipated cost increases created by circumstances such as, but not limited to, changes in delivery date, quantities or specifications for goods/products requested by Buyer, changes in government energy policies, metal premium charges or increases in the cost of energy, raw materials, packaging costs, production processes or delivery mechanisms, are not covered by the price quoted, and the processing in respect of products is subject to adjustment as a result thereof.

Unless a quotation expressly provides otherwise, all quotes and the prices referenced therein are valid for a period as indicated in original quotation following the issuance thereof, except to the extent that such quote is earlier terminated or withdrawn by Nutri SA.

3. ORDERS

Orders placed on the company's quotation are subject to acceptance by the company in writing. All orders whether oral or in writing placed with Nutri SA shall be firm and irrevocable and may not be cancelled or modified without the prior written consent of Nutri SA.

4. PAYMENTS

- 4.1 Nutri SA's terms are cash with order provided that credit facilities may in the discretion of Nutri SA be extended to approved customers, in which event the purchase price shall be paid by the Buyer free of bank and other charges, within 7 (SEVEN) days from the date of Nutri SA's invoice, at the address and/or bank specified on the front of the invoice.
- 4.2 Credit and delivery shall be subject to Nutri SA's approval and Nutri SA reserves the right to alter the terms and fix a limit of credit.
- 4.3 If any payment is not made on due date, then Nutri SA may, without prejudice to any other rights it may have, charge interest on the amount due at the prime rate plus 5%.
- 4.4 For the purpose of 4.2 "the prime rate" means the publicly quoted bank rate of interest at which Nutri SA's bankers lend on overdraft, and a certificate from any manager or accountant of any branch of those bankers (whose appointment or authority need not be proved) as to that rate at any time shall be final and binding on the Buyer.
- 4.5 If the purchase price is stated to be subject to a prompt payment discount then the discount will be allowed only if payment is made on or before the due date for payment of the amount in question. Prompt payment discount shall not apply to deposits on returnable containers or to any other charges which are included on the invoice but are not part of the actual price of goods/products supplied.

Each order or contract shall be treated as a distinct contract; but if Buyer shall fail to fulfil the terms of payment, Nutri SA may without prejudice to any other lawful remedy defer further shipments and/or cancel any order or contract. Buyer shall be liable to Nutri SA for all costs and fees, including attorneys' fees, which Nutri SA may reasonably incur in any actions by Nutri SA taken to collect on any overdue account of Buyer.

5. DELIVERY

- 5.1 Unless otherwise stated the goods/products shall be delivered to the Buyer, at Nutri SA's depot.
- 5.2 In the absence of written advice in accordance with 9.2 or 9.3.2 the goods/products shall be deemed to have been delivered to and accepted by the Buyer complete and in a satisfactory condition.
- 5.3 If Nutri SA, at the Buyer's request, agrees to engage any carrier (transporter) to transport the goods/products for the Buyer then:
 - 5.3.1 Nutri SA is authorized to engage the carrier on the Buyer's behalf, on such terms and conditions as Nutri SA deems fit.
 - 5.3.2 The Buyer shall indemnify Nutri SA against all demands and claims which may be made against Nutri SA by any carrier so engaged and all liability which Nutri SA may incur arising out of the transportation of the goods/products.

If the Buyer refuses to accept delivery of the goods/products when delivery falls due Nutri SA shall be considered to have tendered and the Buyer to have refused to accept delivery, in this event the risk in the goods shall pass to the Buyer and the cost of storing the goods/products shall be for the Buyer's account and shall be paid by the Buyer to Nutri SA on demand.

Nutri SA does not guarantee delivery on any specified date but will endeavour to give delivery on the date stated in the contract of sale.

Time shall not be the essence of any sale and failure by Nutri SA to deliver on the specified date for any reason whatever shall not entitle the Buyer to cancel the contract or claim any damages arising therefrom.

6. INSPECTION

If upon receipt of the goods/products by Buyer at destination the same shall appear not to conform to the order or contract, Buyer shall within three (3) days after receipt thereof notify Nutri SA of such condition and afford Nutri SA a reasonable opportunity to inspect the goods/products and make any appropriate adjustment or replacement. The remedies afforded Buyer under the paragraph hereof entitled "LIMITED WARRANTIES, REMEDIES AND LIMITATIONS" shall be the exclusive remedies for defective goods/products whether or not discovered upon inspection by Buyer. Buyer shall not delay payment for the goods/products pending their inspection.

7. OWNERSHIP AND RISK

7.1 Notwithstanding delivery of any goods/products, ownership shall not pass until the purchase price has been paid in full.

7.2 Subject to 4.3 the risk in the goods/products shall not pass to the Buyer on delivery but upon loading.

7.3 All goods/products supplied by Nutri SA's works, the risk in the goods/products shall pass to the Buyer in respect of such goods/products immediately upon loading at Nutri SA's works.

8. LIMITED WARRANTIES, REMEDIES AND LIMITATIONS

8.1 Defective Goods/Products

Nutri SA warrants to Buyer that at the time of delivery the goods/products sold hereunder will be free from defects in material and workmanship and will conform substantially to Nutri SA's applicable specification as stipulated in the order or contract. Nutri SA's liability and Buyer's remedy under this warranty are strictly limited to the refund of purchase price, repair or replacement of the defective goods/products, at Nutri SA's sole option, of goods/products or materials sold which are returned to Nutri SA and which are shown to Nutri SA's reasonable satisfaction to have been defective provided that written notice of the defect shall have been given by Buyer to Nutri SA within three (3) days of delivery of such goods/products by the Nutri SA. Transportation charges to and from Nutri SA's location for the return of defective goods/products to Nutri SA and their re-shipment to Buyer and the risk of loss thereof will be borne by Nutri SA.

8.2 Title

Nutri SA warrants to Buyer that it will convey good title to the goods/products. Nutri SA's liability and Buyer's remedy under this warranty are strictly limited to the removal of any title defect or, at the sole option of the Nutri SA, to the replacement of the goods/products or parts thereof which are defective in title; provided however, that the rights and remedies of the parties with respect to patent infringement shall be limited to the provisions of subparagraph "c" below.

8.3 Patent Infringement

Nutri SA shall conduct, at its own expense, the entire defence of any claim, suit, or action alleging that, without further combination, the use or resale by Buyer or any subsequent purchaser or user of the goods/products delivered hereunder, directly infringes any International patent, but only on the conditions that,

(1) Nutri SA receives prompt written notice of such claim, suit, or action, full opportunity and authority to assume the sole defence thereof including settlement and appeals, and all information available to Buyer and defendant for such defence,

(2) said goods/products are made according to a specification or design furnished by Nutri SA, or if a process patent is involved, the process performed by the goods/products is recommended in writing by Nutri SA, and

(3) the claim, suit or action is brought against Buyer or one expressly indemnified by Buyer. Provided all three of the foregoing conditions have been met, Nutri SA shall, at its own expense, either settle said claim, suit, or action or shall pay all damages excluding consequential damages and costs awarded by the court therein and, if the use or resale of such goods/products is finally enjoined, Nutri SA shall, at Nutri SA's option, procure for defendant the right to use or resell the goods/products, replace them with equivalent non-infringing goods/products, modify them so they become non-infringing but equivalent, or remove them and refund the purchase price (less a reasonable allowance for use, damage or obsolescence). If a claim, suit, or action is based on a specification or design furnished by Buyer or on the performance of a process not recommended in writing by Nutri SA, or on the use or sale of the goods/products delivered hereunder in combination with other goods/products not delivered to Buyer by Nutri SA, Buyer shall indemnify and save Nutri SA harmless there from.

8.4 Exclusive Warranties and Remedies

THE FOREGOING WARRANTIES ARE EXCLUSIVE AND ARE GIVEN AND ACCEPTED IN LIEU OF (a) ANY AND ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR ARISING OUT OF THE CONDUCT OF THE PARTIES, AND (b) ANY OBLIGATION, LIABILITY, RIGHT, CLAIM, OR REMEDY FOR NUTRI SA'S NEGLIGENCE, ACTUAL OR IMPUTED. The remedies of the Buyer for breach of any warranty arising hereby, expressed or implied, or by operation of law, or for breach of any duty of Nutri SA, expressed or implied or arising out of any conduct of the parties, shall be strictly limited to those provided herein to the exclusion of any and all other remedies. In no event shall Nutri SA be liable for any incidental, special, indirect or consequential damages. The total liability of Nutri SA for all claims of any kind, whether in contract, warranty, indemnity, tort or otherwise, arising out of the supply of goods/products pursuant to any contract or order shall not exceed the price allocable to the item giving rise to such claim. No agreement varying or extending the foregoing warranties, remedies or these limitations will be binding upon Nutri SA unless in writing, signed by a duly authorized executive officer of Nutri SA

9. EXCLUSIONS

9.1 The Buyer shall not have any claim of any nature whatever against Nutri SA.

9.1.1 for any loss or damages of any kind, whether direct or consequential or whether claimed on grounds of breach of contract or negligence, sustained by the Buyer as a result of any error, discrepancy or defect in those specifications, measurements or instruction, or

9.1.2 if the goods/products are not suitable for the purposes for which they are required, whether or not those purposes are known to Nutri SA.

9.2 Subject to 9.1, if any goods/products fail to comply in any respect with requirements of any sale, Nutri SA's elections with reasonable promptness and without any charges provided that Nutri SA receives write notice of the alleged failure within 14 (fourteen) days after the goods/products are delivered to the Buyer and provided such goods/products have been paid for and the Buyer shall not have any other claims against Nutri SA for any such failure.

9.3 Nutri SA is exempt from and not liable under any circumstance whatever for:

9.3.1 any indirect or consequential damages of any kind or any loss of profit or other special damages of any kind, whatever within the contemplation of the parties or not which the Buyer may suffer as a result of any breach by Nutri SA, its servant agent or sub-contractors of it its / their obligations under any contract.

9.3.2 Any claim for any alleged shortage in delivery unless written notice of the claim is received by Nutri SA within 14 (fourteen) days after the goods/products are delivered to the Buyer.

9.3.3 Any claim of any nature arising out of an oral order or oral variation of an order unless that oral order or oral variation order has been confirmed in writing to Nutri SA before Nutri SA has delivered under the contract.

9.4 Subject to and without in any way limiting any of the provisions of this clause 9 Nutri SA's liability to the Buyer for any damages sustained by the Buyer and which are in any way out of any goods/products purchased from Nutri SA including any damages caused by the circumstances be limited to an aggregate for all claims of 10 % (ten percent) of the purchase price of the goods/products concerned.

9.5 The Buyer hereby indemnifies Nutri SA against all damages, costs and expenses for which Nutri SA may become liable as a result of work done in accordance with the Buyer's specifications which involves the infringement of any letters patent or registered design.

10. VIS MAJOR/ Force Majeure

10.1 Buyer acknowledges that the goods/products called for hereunder are to be manufactured or provided by or for Nutri SA to fulfil this order or contract and that the delivery date(s) is (are) based on the assumption that there will be no delay due to causes beyond the reasonable control of Nutri SA. Nutri SA shall not be charged with any liability for delay or non-delivery when due to delays of suppliers, acts of God, nature, governments or their agencies, terrorism, war or sabotage, compliance in good faith with any applicable foreign or domestic governmental regulation or order, whether or not it proves to be invalid, fires, riots, inability to supply or obtain labour, raw materials, supplies, fuel or utilities, labour disputes, work stoppages, lockouts, delays in transportation, earthquakes, floods, storms or other severe weather conditions, power shortages or power failures or any other cause beyond the reasonable control of Nutri SA.

10.2 Nutri SA shall be entitled to cancel the contract forthwith or delay deliveries or to reduce the amount delivered, if it is prevented from or hindered in delivering goods/products of the description covered by the contract through vis major, provided that if that cause has not ceased to operate within 3 (three) months from when it arose, the contract may be terminated by the Buyer giving 30(thirty) days written notice thereof to Nutri SA.

8.3 For the purposes of 10.1 and 10.2 vis major shall include without being limited to strikes, lockouts, accidents, shortages or unavailability of labour, any default or delay of suppliers, transport, delays, riots; political or civil disturbances, the elements, any act of any state or government or any other authority or any cause beyond Nutri SA's reasonable control.

11. CANCELLATION AND SUPENSION

11.1 Nutri SA may cancel the contract/order or any uncompleted part of it, if the Buyer:

11.1.1 commits a breach of any of the terms, or conditions of the contract or

11.1.2 being an individual dies or is provisionally or finally sequestered or surrenders his estate or

11.1.3 being a partnership the partnership is terminated or

11.1.4 being a company or a closed corporation is placed under a provisional or final order of liquidation or judicial management or

11.1.5 compromises or attempts to compromise generally with the Buyer's creditors

11.2 Nutri SA's rights in terms of 11.1 shall not be exhaustive and shall be in addition to its other rights under the agreement or otherwise.

11.3 Upon termination of the contract for any reason whatever.

11.3.1 all amounts then owed by the Buyer to Nutri SA in terms of the contract shall become due and payable forthwith.

11.3.2 Nutri SA may retake possession of any goods/products in respect of which ownership has not passed.

11.4 If any amount owed by the Buyer is not paid on due date or if the Buyer commits any other breach of the contract, then without prejudice to any other right Nutri SA may have

11.4.1 It may immediately suspend the carrying out of any of its then uncompleted obligations until payment is made.

11.4.2 It may terminate any credit facilities previously granted to the Buyer

11.4.3 All amounts then owed by the Buyer to Nutri SA in terms of the contract or from any other cause whatever shall become due and payable forthwith.

12. TAXES

Value Added Tax will be levied unless a copy of the exemption certificate is supplied to the supplier. It is the Buyer's responsibility when placing an order to indicate whether that order is subject to the above mentioned tax or not.

In addition to the agreed purchase price of the goods/products called for hereunder any and all taxes (not including any RSA income or excess profit taxes attributable to Nutri SA) which may be imposed by any taxing authority, arising from the sale, delivery or use of the goods/products and for which Nutri SA may be held responsible for collection or payment, either on its own behalf or that of Buyer, shall be paid by Buyer to Nutri SA upon Nutri SA's demand.

13. WAIVER

Any relaxation which Nutri SA may permit on any one occasion in regard to any of the Buyer's obligations shall not prejudice or be regarded as a waiver of Nutri SA's right to enforce those obligations on any subsequent occasion.

14. NON-VARIATION

No alteration or variation of these conditions shall be of any force or effect unless it is recorded in writing and signed by or on behalf of Nutri SA.

15. NEGOTIABLE INSTRUMENTS

Any promissory note, bill of exchange or other negotiable instrument received by Nutri SA from the Buyer shall not be a novation of the debt for which it is given and the Buyer waives presentment notice of dishonour or protest where applicable.

16. RETURN OF GOODS/PRODUCTS

16.1 No goods/products may be returned or changed without Nutri SA's prior written consent.

16.2 If Nutri SA does consent in terms of 16.1 the Buyer shall be obliged to pay a handling fee of 10 % (ten per cent) of the invoiced price of the goods/products which handling fee shall form part of the selling price of the goods/products which price will be increased by an amount equivalent to such handling fee.

Subject to 16.2 Due to raw material and manufacturing plant scheduling, all orders once placed with and accepted by Nutri SA are non-cancellable SEVEN (7) days prior to the scheduled production date. Orders may be cancelled, and goods/products may be returned for credit only upon the prior approval of Nutri SA upon terms protecting Nutri SA from losses.

Nutri SA will issue a formal RETURN MATERIAL AUTHORIZATION tag to support all authorized returns. When requesting authorization to return an item, Buyer must denote the Buyer's order number, Nutri SA's invoice number, part number and description, and quantity of item to be returned, and the reason for the request. Stock items are returnable at invoice price less 20% restocking charge, freight to be prepaid by Buyer. Non-stock items and/or special items are not subject to return. All material must be returned to Nutri SA on the original pallets /swifts and in the original packaging.

17. PROPER LAW

The validity of the contract its interpretation, the respective rights and obligations of the parties and all other matters arising in any way out of it or its performance or expiration or earlier termination for any reason, shall be determined in accordance with the laws of the Republic of South Africa.

18. JURISDICTION

18.1 If the Buyer is resident or carries on business in the Republic of South Africa then Nutri SA shall be entitled to institute any proceedings against the Buyer arising out of the contract in any Magistrates Court having jurisdiction over the Buyer even if the cause of action exceeds the jurisdiction.

18.2 If the Buyer is not a resident of and does not carry on business in the Republic of South Africa, then the Buyer consents and submits to the jurisdiction of the KwaZulu Natal High Court, Durban, Republic of South Africa and all Courts of Appeal therefrom for all purposes arising out of the contract.

19. LEGAL COSTS

The Buyer shall pay all legal costs, on the attorney and client scale (including collection commission) incurred by Nutri SA in the recovery from the Buyer of all or any money owing by the Buyer under contract of sale.

20. DOMICILIUM

The Buyer chooses the address at which the goods/products are to be delivered as its domicillium citandi et executandi for all purposes under the contract.

21. INTERPRETATION

The headings in these conditions are for convenience only, and not to be taken into account for the purpose of interpreting the contract.

22. APPENDICES

Any appendix or other terms and conditions of the Nutri SA as may be attached hereto, be on the reverse hereof, and/or be identified herewith are hereby incorporated and made a part of these terms and conditions. All orders or contracts shall be subject to such additional terms and conditions which shall control over any inconsistency with the terms and conditions stated herein.

23. CONFIDENTIALITY

Buyer agrees to hold in confidence at all times any data or information of Nutri SA, including, without limitation, any prices set forth in any quote or other document. The foregoing restriction shall not apply to any data or information which is publicly known or in the public domain through means that do not involve a breach by Buyer of its obligations set forth herein.

24. ASSIGNMENT

Neither Buyer nor Nutri SA may assign any of its rights or obligations hereunder or under any order or quote; provided, however, that Nutri SA shall be permitted to assign any of its rights hereunder or under any order or quote in connection with the sale or transfer of all or substantially all of its assets or capital stock, whether by merger, reorganization, consolidation or other similar transaction.

25. ENTIRE AGREEMENT

The terms and conditions of this order or contract constitute the entire agreement between the parties hereto and shall supersede all previous communications, representations, or agreements, either oral or written between the parties hereto with respect to the subject matter hereof.