



*Food for Africa!*

343 MOORE ROAD - GLENWOOD - DURBAN - 4001

P.O. BOX 5909 - DURBAN - 4000

031-201 6923 - TEL - 031-201 6929 - FAX

info@mpilendefoods.co.za - www.mpilendefoods.co.za

## **TERMS AND CONDITIONS OF SALES**

THIS DOCUMENT CONTAINS IMPORTANT INFORMATION ABOUT YOUR RIGHTS, OBLIGATIONS, LIMITATIONS AND EXCLUSIONS THAT SHALL GOVERN THE RELATIONSHIP BETWEEN MPILENDE FOODS AND THE CUSTOMER.

Mpilende Foods (Pty) Ltd, is a South African company ("Mpilende Foods") that manufactures food products for sale and distribution to companies ("Customers") here South Africa and abroad. By accepting delivery of the products listed on the invoice, the customer agrees to be bound by and these terms and conditions.

1. Other than as specifically provided in any separate formal purchase agreement between Customer and Mpilende Foods, these terms and conditions may NOT be altered, amended and/or replaced by the use of any other document(s). Any attempt to alter or amend this document or change to the list of orders for product(s) or services shall render this agreement null and void, unless otherwise agreed to in writing and signed by both parties.
2. This agreement of sale and attendant terms and conditions hereunder shall be deemed to have been made in the province of KZN (KwaZulu Natal) and shall be construed and interpreted according to the applicable laws of the Republic of South Africa. Therefore the parties agree to the non-exclusive jurisdiction of the courts of the Republic of South Africa.
3. The terms of payment shall be determined by Mpilende Foods using its own discretion, following parameters set out in the policy guidelines, unless otherwise negotiated and agreed to by both parties. Mpilende Foods works on either C.O.D. or **thirty (30)** days from the date of delivery of goods and/or services. Payment for the products and services may be made by cash, wire transfer, or some other pre-arranged payment methods.

If credit terms have been accepted by Mpilende Foods, invoices shall become due and payable within thirty (30) days from the date of invoice. Orders placed shall be binding to the customer upon acceptance by Mpilende Foods.

Any quotations given by Mpilede Foods will be valid for the period stated on the quotation. The customer agrees to pay interest on all amounts past the date due of payment at a rate of one and one half percent (1.5%) a month.

4. Trade discounts and/or rebates shall be negotiated and agreed to between Mpilede Foods and the customer and shall form part of the trade agreement. Therefore such shall not apply arbitrarily.
5. These charges will be levied under consolidated billing and therefore priced into the full order sold to the customer but shall not be presented separately.
6. Title to products is transferred from Mpilede Foods to the customer upon delivery and acceptance by the customer at the designated address. Any loss or damage that may occur whilst goods are in-transit shall be Mpilede Food's responsibility. Transportation dates are estimates only.
7. Mpilede Foods warrants that its branded Products conform to its published specifications at the time of delivery. Mpilede Foods warrants that services provided by it will be consistent with its standard specifications and where not prescribed, best or standard practices shall apply.
8. Under Return Policy, the customer who buys Mpilede Foods branded products directly from Mpilede Foods may return them within thirty (30) days from the date of purchase for a refund to the value of the product purchase price in case of cash sales and a credit note to the customer that bought goods on credit.

This shall be subject to quality control protocols to validate claims of goods that are damaged or of poor quality. Mpilede Foods requires that such goods are returned with claims either in the form of empty pack or a minimum of 500g in its original pack in order to fulfil refund criteria.

9. Mpilede Foods may from time to time, using its sole discretion, exchange products or part thereof. Any exchanges will be made in accordance with Mpilede Foods exchange policies effective from the date of exchange.
10. Mpilede Foods shall continuously upgrade and/or revise its products mix and services offering to offer its customers with a broader range to choose from. The company may also discontinue certain products at any time with prior written notice to all its customers. All Mpilede Foods products are manufactured to specification.
11. *Mpilede Foods (including affiliates, officers, directors, employees or agents) does not accept liability beyond the remedies set forth herein, including any liability for products not being available for use. The company will not accept any liability for any damages arising from the use of the products in high risk areas or non-conducive environments, including, but not limited to, the operation of nuclear facilities, communication systems, air traffic control, medical systems, life support or weapons systems. Mpilede foods will not be liable for lost profits, loss of business, or other incidental, indirect, consequential, and special or punitive damages, even if advised of the possibility of such damages, or for any claim by any third party except as expressly provided herein.*

*Customer further agrees that for any liability related to the purchase of products or services, Mpilende Foods shall not accept liability or responsible for any amount of damages above the aggregate ZAR amount paid by customer for the purchase of products and/or services under this agreement*

*The foregoing limitations apply regardless of the cause or circumstances giving rise to such losses (unless if the product had expired during despatch or during production, damage or liability is based on negligence or other torts or breach of contract including fundamental breach or breach of the stated terms). Neither Mpilende Foods nor customer may institute any action in any form arising out of this agreement more than eighteen (18) months after the cause of action had arisen, or in the case of non payment, more than eighteen (18) months from the date of last payment.*

*Some countries do not allow the exclusion of limitation of (i) incidental or consequential damages or (ii) implied warranties or conditions, so the above exclusions may not apply.*

12. This Agreement shall remain in force from the date of signature until terminated by either Party on account of breach or if one of the Parties gives to the others no less than 90 days written notice of termination or upon one of the Parties going into liquidation either compulsory or voluntary.
13. Should a party to this Agreement (The 'Defaulting Party') commit a breach of this Agreement and fail to remedy such breach within fourteen (14) business days of written notice from the other party (The 'Aggrieved Party') requiring the breach to be remedied, then the Aggrieved Party will be entitled, as its option, either to cancel this Agreement or to claim specific performance of all of the Defaulting Party's obligations in either event without prejudice to the Aggrieved Party's right to claim any damages that it may have suffered and whether or not all obligations under the Agreement have fallen due for performance. In such event, the Aggrieved Party shall also be entitled to claim from the Defaulting Party all Legal Costs and disbursements incurred by the Aggrieved Party as a result of such breach.

#### 14. **Dispute Resolution**

- a) **Acknowledgments** the customer acknowledges that Mpilende Foods possesses valuable confidential and proprietary information, including trade-marks and business practices, that would be damaging to them if revealed in open court. The parties further acknowledge and agree that it is preferable to resolve all disputes between them confidentially, individually, and in an expeditious and inexpensive manner. The parties accordingly acknowledge and agree that private dispute resolution is preferable to court actions.
- b) **Good Faith Negotiation** the parties agree that before commencing any arbitration in the manner set out in Subsection 11(c) below, the parties shall first attempt to resolve any dispute or differences between them by way of good faith negotiation. The good faith negotiation shall commence by each party

communicating their position regarding the complaint, claim, dispute, or controversy to the other party, and how the parties should resolve the dispute. The parties shall then make good faith efforts to negotiate a resolution of the claim, dispute, or controversy. Neither party shall commence any arbitral proceedings unless nor until the good faith does negotiation fail.

- c) **Arbitration.** Any claim, dispute, or controversy (whether in contract, tort, or otherwise, whether pre-existing, present or future, and including statutory, common law, intentional tort and equitable claims capable in law of being submitted to binding arbitration) against Mpilende Foods, its agents, employees, officers, directors, successors, assigns or affiliates (collectively for purposes of this paragraph, "Mpilende Foods") arising from or relating to this Agreement, its interpretation, or the breach, termination or validity thereof, the relationships between the parties, whether pre-existing, present or future, (including, to the full extent permitted by applicable laws, relationships with third parties who are not signatories to this Agreement), or any related purchase shall be resolved exclusively and finally by binding arbitration administered by any arbitration & mediation body .

15. **Injunctive Relief and Provisional Relief in Aid of Arbitration**

Notwithstanding the provisions in this Section 12 or anywhere else in this Agreement, Mpilende Foods shall have the right to seek and obtain any provisional or interim relief from any court of competent jurisdiction to protect its trade-mark or property rights or to preserve the status quo pending good faith negotiation and/or arbitration.

16. Customer agrees to comply with all applicable laws and regulations of the Republic of South Africa.

17. Customer acknowledges that the Products licensed or sold hereunder are subject to, and Customer agrees to comply with the export control laws and regulations of South Africa.

18. This Agreement read with its Annexures constitutes the entire agreement between the Parties with regards to the purpose for which it was set out. No Party shall be bound by any representation, warranty, undertaking, promise or the like not recorded in this Agreement. No addition to, variation, consentual cancellation of this Agreement shall be of any force or effect unless done in writing and signed by the parties concerned.

19. The section headings used herein are for convenience of reference only and do not form a part of these terms and conditions, and no construction or inference shall be derived therefrom.

20. Mpilende Foods shall not be liable for any delay or failure in performance caused by circumstances beyond its reasonable control.

21. Mpilende Foods respects your privacy and will uphold at any given time for the maintenance of a healthy and long term business relationship.

22. **Notices**

Any notice required to be given in terms of this agreement shall be deemed to have been validly if delivered to the parties' following addresses:

**Mpilende Foods (Pty) Ltd**

P O Box 5909

Durban- South Africa

4000

Tel : +27 31 201 6923

Fax: +27 31 201 6929

email : [info@mpilendefoods.co.za](mailto:info@mpilendefoods.co.za)

website : [www.mpilendefoods.co.za](http://www.mpilendefoods.co.za)

**(CLIENT DETAILS)**

**THUS DONE and SIGNED at DURBAN this ..... day of ..... 2011 in  
the presence of the undersigned witnesses:**

**AS WITNESSES**

1.....

2.....

.....

**MPILENDE FOODS (PTY) LTD**

**THUS DONE and SIGNED at ..... this ..... day of  
2011**

**in the presence of the undersigned witnesses:**

**AS WITNESSES**

1.....

2.....

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