

**GENERAL TERMS AND CONDITIONS FOR THE PURCHASE OF GOODS AND/OR SERVICES BY BUYERS
LOCATED IN SOUTH AFRICA, BOTSWANA, NAMIBIA AND NIGERIA AS DETAILED UNDER SCHEDULE A**

NOTE: No changes will be accepted to the PepsiCo Inc. Global Supplier Code of Conduct or these Terms and Conditions for the Purchase of Goods and/or Services

1. DEFINITIONS

In these Terms and Conditions, the following defined terms shall have the following meaning:

- 1.1 **"Buyer"** means the legal entity identified under a Purchase Order being one of the legal entities detailed under Annexure A hereto, as the party to procure the Goods or Services;
- 1.2 **"Data Protection Legislation"** means all Governing Laws in force from time to time in any jurisdiction relating to the processing of personal data, network or data security and/or the privacy of individuals and/or juristic persons;
- 1.3 **"Goods"** means the materials, articles, products, ingredients, equipment, packaging, machinery or mechanical spares, tools, (or any of them or anything of this nature) which are the subject of a Purchase Order to be supplied by the Supplier in terms of these Terms and Conditions;
- 1.4 **"Governing Laws"** as detailed for the respective Buyer under Annexure A hereto;
- 1.5 **"Operator"** means any person who processes Personal Information on another's behalf as a sub-contractor, in terms of a contract or mandate, without coming under the direct authority of the person requesting the processing;
- 1.6 **"PepsiCo"** shall mean the ultimate parent entity of the Buyer existing under the laws of the State of New York in the United States of America;
- 1.7 **"PepsiCo Personal Data"** means all personal data which is owned, controlled or processed by Buyer and which is provided by or on behalf of Buyer to the Supplier or which comes into the possession of the Supplier as a result of or in connection with the supply of products and/or services pursuant to these Terms and Conditions;
- 1.8 **"Purchase Order"** means a duly issued, written and pre-numbered SAP purchase order form dispatched by the Buyer to the Supplier setting out the details of the Goods and/or Services to be supplied, volume thereof, agreed pricing and any other relevant information including the Buyer's specified domicile;
- 1.9 **"Services"** means the services which are the subject of a Purchase Order to be supplied by the Supplier in terms of these Terms and Conditions.
- 1.10 **"Supplier"** means the person, firm or company to whom a Purchase Order is addressed.; and
- 1.11 **"Tax"** means: all foreign, federal, state, provincial, local and other taxes, fees, levies, duties and other assessments or charges of whatever kind (including without limitations, income, excise, stamp, transfer, property, value added, real estate, sales, payroll, gains, gross receipts, withholding and franchise taxes) together with any interest, penalties, or additions payable in connection with such taxes, fees, levies, duties or other assessments or charges.
- 1.12 **"Terms and Conditions"** means, collectively, these terms and conditions for the purchase of goods and/or services, any annexure hereto, and the Purchase Order.

2. ACCEPTANCE OF TERMS

- 2.1 These Terms and Conditions shall be incorporated into a Purchase Order and shall govern and control the commercial relationship between Buyer and Supplier, unless Buyer and Supplier purposely negotiated and finalised a valid and effective written agreement to govern the procurement of the Goods and/or Services detailed under a Purchase Order in which instance the purposely drafted written agreement shall govern and control the Purchase Order and these Terms and Conditions shall have no effect.
- 2.2 Supplier's commencement of work on the Goods and/or Services under the terms of a Purchase Order, or shipment of the Goods or rendering of the Services whichever occurs first, shall be

deemed to be the Supplier's acceptance of the Purchase Order. SUPPLIER'S ACCEPTANCE IS LIMITED TO ACCEPTANCE OF THESE GENERAL TERMS AND CONDITIONS OF PURCHASE AND DOES NOT INCLUDE ANY ADDITIONAL OR DIFFERENT TERMS PROPOSED BY SUPPLIER INTENDED TO VARY THESE GENERAL TERMS AND CONDITIONS.

- 2.3 Under no circumstances shall any Buyer identified under Schedule A hereto be considered jointly liable for performance of another Buyer similarly identified under Schedule A. Each Buyer under a Purchase Order shall be solely liable to the Supplier under that Purchase Order.

3. COMPLETION

- 3.1 Time is of the essence for performance by Supplier in terms of a Purchase Order and/or any performance dates communicated by Buyer to Supplier and Supplier herewith undertake to meet such performance dates.
- 3.2 If the Goods and/or Services are not delivered on the date(s) specified in the Purchase Order, the Buyer may, without liability and without prejudice to any other rights or remedies it may have:
- 3.2.1 terminate the Purchase Order by notice to the Supplier effective upon receipt in respect of Goods not yet shipped and/or Services not yet rendered;
 - 3.2.2 buy substitute Goods and/or Services elsewhere and recover from Supplier any additional expenditure reasonably incurred; and
 - 3.2.3 refuse to accept any subsequent delivery of the Goods and/or performance of the Services which Supplier attempts to make.

4. QUALITY/PERFORMANCE

- 4.1 Supplier warrants that the Goods and/or Services shall:
- 4.1.1 be of the best quality, material and workmanship;
 - 4.1.2 conform in all respects to the terms of the Purchase Order and any performance criteria, specifications, samples, quality requirements, patterns or artwork requested by the Buyer;
 - 4.1.3 be merchantable, safe and appropriate for the purpose for which Goods and/or Services of this kind are normally used;
 - 4.1.4 if applicable with respect to ingredients, when processed in accordance with Buyer's standard manufacturing processes, produce high quality finished product(s) that conform with Buyer's standards, specifications and sensory attributes;
 - 4.1.5 be properly contained, manufactured, supplied, packaged, marked and labelled;
 - 4.1.6 be fit for the particular purpose for which the Buyer intends to use the Goods and/or Services, which purpose Supplier acknowledges has been disclosed to Supplier;
 - 4.1.7 be free from any third-party lien, claim, title or interest;
 - 4.1.8 not infringe the intellectual property rights of any third parties; and
 - 4.1.9 comply with all legislative requirements under Governing Law, as well as industry standards, special dietary certification (where applicable), including, without limitation, all laws relating to foodstuffs, food safety, consumer protection, occupation health and safety, data privacy and environmental laws and legislation of any jurisdiction implicated under the Purchase Order.
- 4.2 Ownership of, and all right and title in and to, any materials, equipment, components, ingredients, documentation, recipes, specifications, samples or any other items or assets provided to the Supplier by the Buyer to enable Supplier's performance under a Purchase Order and/or for any other purposes at all, shall remain vested in Buyer and Supplier hereby waives irrevocably any and all liens and/or rights of retention it may have, or acquire, in respect thereof.
- 4.3 Buyer's signature of receipt, inspection, testing, payment for or use of the Goods or Services (as the case may be) furnished under a Purchase Order shall not constitute acceptance thereof or affect Supplier's obligations and warranties under the Terms and Conditions which shall survive the Buyer's inspection, testing, acceptance and/or use.

- 4.4 Buyer may inspect the Goods or assess the performance of the Services and may accept or reject within a reasonable time from discovery and in all circumstances before the natural expiration of the shelf life (as relevant to Goods only), any and all of the Goods or Services which are, in the Buyer's judgement, defective, of poor quality, unsatisfactory or which do not conform in whole or part to these Terms and Conditions ("**Rejected Performance**") and upon such direction and without prejudice to any of Buyer's rights or remedies Supplier shall, at Supplier's sole cost and expense:
- 4.4.1 Refund to Buyer or credit Buyer's account an amount equal to the financial value of the Rejected Performance as well as any costs incurred by Buyer in relation thereto; or
 - 4.4.2 Replace, reperform, remedy or correct any Rejected Performance at no additional cost to Buyer within seven (7) business days of Buyer's demand; or
 - 4.4.3 Buyer may also choose to replace any Good subject to Rejected Performance from any other source and recover from Supplier any costs incurred by Buyer in connection therewith including but not limited to costs relating to packaging, inspection, insurance, additional costs in sourcing of replacement Goods, delivery (both in terms of cost originally incurred by Buyer or to be incurred to return the Goods subject to the Rejected Performance and uninstall of equipment; or
 - 4.4.4 Terminate the Purchase Order on notice to Supplier, at no cost to Buyer and obtain such other remedies as may be available to it either under these Terms and Conditions or otherwise at equity or law to include recovery of cost should Buyer elect to perform an obligation but recognising that at no stage shall Buyer be obliged to do so, and recover the cost of doing so from Supplier. Upon receipt of a notice of termination from Buyer, Supplier shall immediately stop and cause all its suppliers and sub-contractors to stop all work under the Purchase Order or the part, which has been terminated.
- 4.5 Supplier is liable for any cost, damages and losses under this Section 4.4. and shall pay that amount on demand, to include reasonable and necessary legal costs incurred by Buyer arising from a material breach of these Terms and Conditions by the Supplier, on the attorney and own client scale and on a full indemnity basis, including any tracing fees and collection commission.

5. **VENDOR ASSURANCE, FOOD SAFETY, ENVIRONMENTAL AND OTHER POLICIES**

- 5.1 Supplier acknowledges and confirms its commitment to:
- 5.1.1 maintain processes, systems, investment and appropriate resourcing to assure best practises to achieve food safety and compliance with PepsiCo Vendor Assurance procedures, as made available by Buyer, at no cost to Buyer;
 - 5.1.2 comply with the requirements of the PepsiCo Supplier Approval and Compliance Programmes, as duly communicated to Supplier;
 - 5.1.3 ensure all Goods and/or Services provided for the benefit of Buyer, comply with all regulatory and legislative requirements under Governing Law, including without limitation, requirements relating to traceability;
 - 5.1.4 ensure compliance with any agreed specifications against which Buyer is to perform;
 - 5.1.5 ensure that all Goods will comply with the PepsiCo Raw Material Quality & Food Safety Requirements (available on request) including, without limitation PepsiCo requirements relating to traceability;
 - 5.1.6 commit to engage with Buyer to develop sustainability programmes and participate with such sustainability initiatives as may be communicated to it from time to time by the Buyer; and
 - 5.1.7 fully disclose to Buyer the presence of any recognised allergenic ingredients in connection with the Goods and, if applicable, adequately label such on the Goods and/or packaging.
- 5.2 If Supplier becomes aware that any of the Goods are or may become infested, adulterated, contaminated or in violation of Governing Laws or are or may become harmful to persons or property whether the Goods are used in the manufacture of, or become part of Buyer's products,

or that the design or construction of the Goods is or may be defective in any manner, Supplier shall immediately give written notice to Buyer and provide all relevant information in a timeous manner.

- 5.3 Buyer shall at any time be entitled on written notice to the Supplier to require the Supplier to halt the supply of the Goods in the event that the Buyer is obliged to or elects to market withdrawal or recall any of its goods or materials which used or incorporated the Goods.
- 5.4 Buyer may inspect and audit the facilities and premises used by the Supplier for any purposes associated with the manufacture, distribution and/or supply of Goods and/or Services to a Buyer at any time during normal business hours on reasonable notice to Supplier.

6. PAYMENT AND TAX

- 6.1 No payment shall be made by Buyer to the Supplier unless valid tax invoice(s) and/or credit notes relating to a specific Purchase Order have been received by the Buyer.
- 6.2 Supplier shall deliver to Buyer a month-end statement which reflects and sets out a summary of the invoices delivered by Supplier to Buyer during the month to which the statement relates. Supplier shall be entitled to reflect in such statement any invoices in respect of which the Buyer has not yet made payment, whether such invoice relates to the month of the statement or not. The Purchase Order number must be clearly stated on all correspondence, invoices, month-end statements and delivery notes. Under no circumstances will Buyer be obliged to pay an invoice, if it fail to satisfy all requirements of a valid Tax invoice as prescribed under the Governing Law. Similarly, under no circumstances shall Supplier invoice Buyer for Goods yet to be delivered and/or Services yet to be rendered in the absence of an agreement under which an advance payment is recorded.
- 6.3 Subject to the provisions above, **Buyer shall make payment to Supplier no later than seventy five (75) days from date of month-end statement.**
- 6.4 If the payment due date (i.e., the 75th day) falls on a Saturday, Sunday or public holiday, the payment due date shall be the next business day following such Saturday, Sunday or holiday in the country in which payment is to be processed. Should the date of payment fall during the period 15th December to 31st December (both days inclusive), the first payment due date (business day) of the following calendar year, shall be considered as the due date of payment.
- 6.5 Payment shall be deemed made by electronic funds transfer ("EFT"), upon confirmation by Buyer's accounts payable team that such EFT has been sent to Supplier.
- 6.6 In the event any Tax becomes due by reason of these Terms and Conditions and the Purchase Order, such Tax shall be borne by the party upon whom such Tax is imposed by applicable law.

7. TERMINATION FOR CONVENIENCE AND CHANGES

- 7.1 Upon notice to Supplier, Buyer may terminate a Purchase Order or any part thereof solely for its convenience. Upon its receipt of Buyer's notice of termination, Supplier will immediately stop and cause all its suppliers and sub-contractors to stop all work under the Purchase Order or the part which has been terminated. buyer will pay Supplier's actual direct costs resulting from the termination, but Buyer will not be liable to pay Supplier for any work performed after receipt by Supplier of the notice of termination, nor for any costs that Supplier could reasonably have avoided.
- 7.2 Buyer may, at any time prior to delivery of the Goods, change the drawings, designs, specifications, materials, packaging, time and place of performance, delivery, and method of transportation under a Purchase Order.
- 7.3 Supplier agrees to accept any changes, provided that if a change increases or decreases the cost or time required for performance, the parties will equitably adjust and modify in writing the terms of the Purchase Order. In addition, Supplier shall inform Buyer in advance of any material change, intentional or otherwise, to the Goods as a direct result of Buyer's request for change, including, without limitation, changes in composition, quality specifications, manufacturing processes, labelling, functionality, safety, manufacturing locations, and any suppliers or subcontractors

utilised and if not reasonably acceptable to Buyer and upon notice to Supplier, Buyer may elect to cancel the Purchase Order.

- 7.4 Buyer may, at any time, request a change to the scope or execution of the Services under a Purchaser Order. If the Buyer requests a change to the scope or execution of the Services, Supplier shall, within a reasonable time, provide a written estimate to the Buyer of:
- 7.4.1 the likely time required to implement the change;
 - 7.4.2 any necessary variations to the Supplier's charges arising from the change; and
 - 7.4.3 any other impact of the change on the terms of the Order.
- 7.5 If Buyer does not wish to proceed, there shall be no change to the Purchaser Order. However, if Buyer confirms its in-principal alignment to proceed with the change, Supplier shall only implement the change after having secured Buyer's agreement on the necessary variation to its charges, the Services and any other relevant terms of the Purchase Order to take account of the change and the Purchase Order shall be formally amended accordingly.

8. PRICE WARRANTY, FREIGHT CHARGES & SET OFF

- 8.1 Supplier warrants that the prices for the Goods and/or Services are complete and no less favourable than those currently extended to Supplier's other customers of similar account size for similar quantities of the same or similar Goods and/or Services (on a like, for like basis). If Supplier offers better prices for the Goods and/or Services to other customers of similar account size for similar quantities of the same or similar Goods and/or Services (on a like-for-like basis) during the effective term of the Purchase Order, Supplier will reduce Buyer's prices correspondingly.
- 8.2 The purchase price payable for the Goods and/or Services is the price quoted by the Supplier and accepted in writing by the Buyer through issuance of the Purchase Order. The price(s) specified is (are) firm, all-inclusive and not subject to change for any reason whatsoever, unless Buyer's prior written approval was obtained in each instance. Where applicable, and if Buyer is to assume any risk due to forex changes, Supplier shall clearly state on its quotation to result in a Purchase Order, the exchange rate relied on in submitting its quotation.
- 8.3 Without Buyer's prior written consent, Supplier shall not add any charges, including without limitation, charges for shipping, packaging, labelling, storage, insurance, boxing or crating, customs duties or taxes, labour costs, material, transport and exchange rate. If Supplier uses published freight charges, Supplier shall credit to Buyer any decrease in the freight charges.
- 8.4 In the event that Buyer has a claim against Supplier under a Purchase Order or any other transaction with Supplier, Buyer may deduct or set off said claim or any disputed amounts from Supplier's dues under this Purchase Order.

9. GENERAL WARRANTIES

- 9.1 Supplier hereby warrants to and in favour of Buyer that:
- 9.1.1 it has the legal capacity and has taken all necessary corporate action required to empower and authorise it to enter into these Terms and Conditions;
 - 9.1.2 to the best of its knowledge and belief, it is not aware of the existence of any fact or circumstance that may impair its ability to comply with all its obligations in terms of these Terms and Conditions;
 - 9.1.3 it accepts these Terms and Conditions as principal (and not as agent or in any other capacity);
 - 9.1.4 it is not relying upon any statement or representation by or on behalf of Buyer, except those expressly set forth in these Terms and Conditions;
 - 9.1.5 there are no circumstances, facts or reasons which are known, or ought to be known by the Supplier, which should have been disclosed to the Buyer and which would have influenced the Buyer's decision in appointing the Supplier to supply the Goods and/or Services;

- 9.1.6 it has the appropriate governance, risk management, business continuity plans and internal controls in place to deliver the Goods and/or Services in accordance with these Terms and Conditions and to comply with all Governing Laws;
- 9.1.7 it shall at all times manufacturer, supply and deliver the Goods and/or perform the Services with competence, integrity and diligence;
- 9.1.8 it has the operational capability and financial means and reserves to deliver the Goods and/or Services in accordance with these Terms and Conditions; and
- 9.1.9 it has in place and will maintain for the duration of its performance under a Purchase Order the requisite licenses, qualifications and authority to provide the Goods and/or Services.
- 9.2 Supplier's representations and warranties under this clause shall be a separate warranty and will in no way be limited or restricted by inference from the terms of any other warranty or by any other provisions in these Terms and Conditions; shall continue and remain in force notwithstanding the completion of any or all the transactions contemplated in these Terms and Conditions; and shall prima facie be deemed to be material and to be a material representation inducing the Buyer to enter into these Terms and Conditions.

10. INDEMNIFICATION

- 10.1 In addition to the Supplier's other obligations hereunder, the Supplier, its parents and affiliates shall defend, indemnify and hold the Buyer harmless against any and all demands, damages, claims, liabilities, losses, costs and expenses (including legal expenses) ("**Claim**") arising out of or resulting from:
 - 10.1.1 any known or unknown defect in the Goods and/or Services;
 - 10.1.2 the negligence of, default of or breach of these Terms and Conditions (including breach of any warranty) by the Supplier, its agents, employees or sub-contractors;
 - 10.1.3 unsafe, defective, contaminated, hazardous or deficient Goods brought against the Buyer in under Governing Laws;
 - 10.1.4 alleged patent, copyright, trademark, trade dress, trade secret or other intellectual property right infringement or alleged unfair competition resulting from similarity in design, trademark or appearance of the Goods and/or Services;
 - 10.1.5 failure to comply with Governing Laws and related regulations.
- 10.2 Supplier shall maintain insurance coverage in compliance with Governing Laws, sufficient to satisfy its indemnification obligations hereunder including without limitation third party liability insurance cover, product liability insurance cover and professional liability insurance cover.

11. LIMITATION OF BUYER'S LIABILITY

THE BUYER SHALL NOT BE LIABLE TO THE SUPPLIER FOR ANY INDIRECT DAMAGE OR CONSEQUENTIAL LOSSES, INCLUDING, BUT NOT LIMITED TO, THE LOSS OF PROFITS, LOSS OF INCOME AND THE LOSS OF DATA. THE BUYER'S LIABILITY IN RELATION TO ANY CLAIM FOR LOSS OR DAMAGE ARISING OUT OF OR, IN CONNECTION WITH, OR RESULTING FROM THESE TERMS AND CONDITIONS OR A PURCHASE ORDER SHALL IN NO CASE EXCEED THE PRICE ALLOCABLE TO THE GOODS AND/OR SERVICES OR UNIT THEREOF GIVING RISE TO THE CLAIM.

12. PEPSICO GLOBAL INFORMATION SECURITY REQUIREMENTS (GISR)

Supplier will, at all times, maintain and follow a written information security program that complies with all applicable laws and regulations in each jurisdiction where it provides products and/or services to Buyer. Such written information security program shall include appropriate administrative, physical, and technical security safeguards consistent with industry standards designed to: (i) ensure the security and confidentiality of Buyer information; (ii) protect against any anticipated threats or hazards to the security or integrity of Buyer information; (iii) protect against unauthorized destruction,

modification, disclosure, access to or use of Buyer information; and (iv) prevent against the accidental loss of or damage to Buyer information. Such measures shall be no less stringent than those used to secure Supplier's own information of a similar type, and in no event less than reasonable in view of the type and nature of the information involved. Supplier will use industry-standard and up to date security tools and technologies, as industry standards change over time, in providing the products and/or services to Buyer, and ensure that its employees, subcontractors and agents who perform work under this Agreement do the same. In the event of any unauthorized disclosure or use of, or access to, Buyer information, Supplier will notify Buyer within 72 hours of such disclosure, use or access at PepsiCoSecurity@pepsico.com with a copy to ITLegalNotice@pepsico.com.

13. GOVERNING LAWS AND DISPUTE RESOLUTION

These Terms and Conditions shall be governed by and shall be construed in accordance with the Governing Laws detailed for the relevant Buyer under Schedule A. Any dispute arising out of or in connection with a Purchase Order or any of these Terms and Conditions, including any question regarding the existence, validity or termination of a Purchase Order or any of these Terms and Conditions, shall be referred to and resolved by arbitration as detailed for the relevant Buyer under Schedule A. The language to be used in the arbitral proceedings shall be English. Notwithstanding the above, Buyer may seek interim or immediate relief from a court of competent jurisdiction if such relief is necessary to protect its rights or interests in connection with a Purchase Order or any of these Terms and Conditions.

14. MISCELLANEOUS TERMS

- 14.1 **Supplier Code of Conduct and Anti-Bribery.** These Terms and Conditions and all Purchase Orders shall be subject to, and Supplier shall adhere to:
- 14.1.1 PepsiCo, Inc.'s Supplier Code of Conduct (the 'Code of Conduct'), which is available at the following website: www.pepsico.com/SupplierCodeofConduct, which may be amended from time to time by PepsiCo Inc.;
 - 14.1.2 PepsiCo, Inc.'s International Anti-Bribery Compliance Policy (the 'Anti-Bribery Policy'), which is available at the following website: <http://www.pepsico.com/About/Global-Code-Of-Conduct> and which may be amended from time to time by PepsiCo Inc.; and
 - 14.1.3 All Governing Laws, rules and regulations relating to or affecting a Purchase Order including the U.S. Foreign Corrupt Practices Act available at: <http://www.justice.gov/criminal/fraud/fcpa/docs/fcpa-english.pdf> and any other applicable anti-bribery laws.
 - 14.1.4 Supplier further agrees not to corruptly make any offer, payment, promise of gifts or money or any other thing of value to any government official or employee, political party or political candidate ('Government Official') for the purpose of influencing any act or decision of such Government Official, inducing such Government Official to act in violation of his lawful duty or securing any improper advantage.
- 14.2 **Export Control.** Supplier warrants and certifies that, unless identified otherwise, all parts, components or software incorporated to the Goods to be supplied pursuant to a Purchase Order, are not subject to the U.S Export Administration Regulations (EAR). Supplier shall identify through written certification to the Buyer all Goods provided to the Buyer pursuant to a Purchase Order and these Terms and Conditions that contain parts, components or software that currently are or were subject to U.S. export controls under the EAR. Furthermore, Supplier will comply with all applicable export laws and regulations related to or incidental to the supply of the Goods under a Purchase Order and these Terms and Conditions. If Supplier is not the original manufacturer of the Goods, including all parts, components or software, it herewith confirms that it obtained independent verification in extending this warrantee and/or certification to the Buyer.

- 14.3 **Independent Contractor.** The parties agree that Supplier, its employees, agents and sub-contractors are performing Services or providing Goods as independent contractors and not as the Buyer's employees, contractors, temporary employees, regardless of where they perform the actual Services. Supplier shall fully indemnify Buyer if any of Supplier's employees, contractors claim they are deemed employees of Buyer under Governing Law.
- 14.4 **Force Majeure.** Either Party shall be entitled to suspend performance of its obligations in terms of this these Terms and Conditions and/or a Purchase Order to the extent that such performance is impeded or made unreasonably onerous by Force Majeure, meaning, but not limited to, any of the following circumstances: industrial disputes and any other circumstance beyond the control of the parties such as fire, war, extensive military mobilisation, insurrection, requisition, seizure, embargo, restrictions in the use of power, currency and export restrictions, epidemics, natural disasters, extreme natural events and terrorists acts caused by any such circumstance referred to in this clause. The Party claiming to be affected by Force Majeure shall notify the other Party in writing within five (5) business days of the intervention and cessation of such circumstance. If a Party fails to give such notice, the other Party shall be entitled to compensation for any additional and/or costs which it incurs and which it could have avoided had it timeously received such notice. Notwithstanding what is contained herein, either Party shall be entitled to terminate these Terms and Conditions and the related Purchase Order by notice in writing to the other Party if performance of the obligations under these Terms and Conditions and/or a Purchase Order is suspended due to Force Majeure for more than 30 (thirty) days.
- 14.5 **Confidentiality.** Supplier shall consider as "Confidential Information" all non-public information provided by Buyer; all specifications or other documents prepared by Buyer in connection with a Purchase Order; the fact that Buyer has contracted to purchase Goods and/or Services from the Supplier, and all other non-public information relating to a Purchase Order. Without Buyer's prior written consent, Supplier shall not disclose or use any Confidential Information for any purpose other than performing a Purchase Order.
- 14.6 **Conflict of Interest.** Supplier represents and warrants that it has no business, professional, personal, or other interest, including, but not limited to, the representation of other clients, that would conflict in any manner or degree with the performance of its obligations under a Purchase Order or these Terms and Conditions or is reasonably aware of any circumstances that will impair Supplier's impartiality to exercise independent judgement in the interest of Buyer in performing under a Purchase Order or these Terms and Conditions (each a "**Conflict of Interest**"). If any such actual or potential Conflict of Interest arises under a Purchase Order or these Terms and Conditions, Supplier shall immediately inform Buyer in writing of such Conflict of Interest. If, in the reasonable judgment of Buyer, such Conflict of Interest poses a material conflict with the performance of Supplier's obligations under a Purchase Order or these Terms and Conditions, then Buyer may terminate the Purchase Order and/or these Terms and Conditions immediately upon written notice to Supplier and such termination of the Purchase Order and/or these Terms and Conditions shall be effective upon receipt of the termination notice by Supplier.
- 14.7 **Assignment/Subcontracting.** Supplier may not cede, delegate and/or assign nor subcontract any part of a Purchase Order without Buyer's prior written consent. If Supplier subcontracts any part of a Purchase Order, Supplier shall bind each of its sub-contractors by terms no less stringent than these Terms and Conditions; provided however that nothing contained in any such sub-contracting arrangement shall create, nor be represented to create, a contractual relationship between any such sub-contractor and Buyer, nor shall Supplier be relieved of its obligations under these Terms and Conditions or the Purchase Order, notwithstanding the fact that the Buyer consented to Supplier's appointment of a sub-contractor.
- 14.8 **Privacy.** Buyer and Supplier agree that Buyer is the data controller and Supplier is the data processor for the purposes of processing PepsiCo Personal Data pursuant to these Terms and Conditions. Supplier shall, and shall procure that its employees, officers and contractors, perform its obligations (including the processing of PepsiCo Personal Data) pursuant to these Terms and

Conditions in accordance with all Data Protection Legislation and solely on the written instructions of Buyer.

- 14.9 **Broad-Based Black Economic Empowerment.** Only relevant to those Suppliers existing under the Governing Law of the Republic of South Africa, in accordance with the details included to Schedule A hereto.
- 14.10 **Title and Risk.** Title to the Goods shall pass to Buyer upon delivery to the designated delivery point without prejudice to any right of rejection, which may accrue to Buyer under these Terms and Conditions. Delivery of the Goods to the designated delivery point extinguishes Supplier's proprietary rights in them and Supplier retains no title. The Supplier shall:
- 14.10.1 be responsible for and bear the risk of loss of or damage to the Goods until they are collected by or delivered to the designated delivery point as stated in the Purchase Order and accepted by the Buyer's authorised representative; and
- 14.10.2 bear all risks and expenses related to the return of Goods subject to Rejected Performance, including without limitation, freight, duties, insurance, packaging, materials and labour costs.
- 14.11 **Waiver and Remedies.** Neither the Buyer's failure to insist on the performance of any of these Terms and Conditions, nor its failure to exercise any right or privilege, or its waiver of any breach hereunder, shall be deemed to be a waiver of any of the provisions under these Terms or Conditions or breaches by Supplier under a Purchase Order whether of the same or a similar type. The rights and remedies provided by these Terms and Conditions are cumulative and in addition to and not exclusive of any rights or remedies provided by law.
- 14.12 **Cooperation and Good Faith.** Each of the Parties undertakes at all times to do all such things, perform all such acts, take all such steps and procure the doing of all such things, within its power and control, as may be open to it, necessary for and incidental to the putting into effect or maintenance these Terms and Conditions. The Parties shall at all times act in good faith towards each other and shall not bring the other party into disrepute.
- 14.13 **Notices and Legal Process.** Any written notice or legal document must be addressed to the Buyer and must be delivered to / served by hand at the business address of the relevant Buyer identified under Schedule A for the attention of the Legal Department.
- 14.14 **Entire Agreement.** In the absence of a purposely negotiated, finalized, valid and effective written agreement to govern the procurement of the Goods and/or Services between a Buyer and a Supplier detailed under a Purchase Order, a Purchase Order shall incorporate these Terms and Conditions and shall constitute the entire agreement regarding the supply of Goods and/or Services provided for under that Purchase Order. These Terms and Conditions and any Purchase Order may not be modified except in writing and signed by an authorised representative of the Supplier and the Buyer.
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SCHEDULE A

BUYERS REGISTERED, EXISTING AND OPERATING IN THE REPUBLIC OF SOUTH AFRICA		
Legal Entity and Domicilium citandi et executandi	<u>Pioneer Foods (Pty) Ltd</u> (Registration Number 1957/000634/07)	Parc Du Cap Office Park (Building 5), 10 Willie van Schoor Avenue, Bellville, 7530, South Africa Email. legalssa@pepsico.com
	<u>Pioneer Foods Groceries (Pty) Ltd</u> (Registration Number 1993/000454/07)	
	<u>Pioneer Foods Wellingtons (Pty) Ltd</u> (Registration Number 2003/013160/07)	
	<u>PepsiCo South Africa (Pty) Ltd</u> (formerly Simba (Pty) Ltd) (Registration Number 1995/003667/07)	Andre Greyvenstein Avenue, Isando, 1600, Johannesburg, South Africa Email. legalssa@pepsico.com
	<u>Future Life Health Products (Pty) Ltd</u> (Registration Number 2015/052867/07)	1 Mzimkhulu Drive, La Mercy, Kwa-Zulu Natal, South Africa Email. legalssa@pepsico.com
Governing Law	Governing Laws of the Republic of South Africa	
Dispute Resolution	Any dispute arising out of or in connection with a Purchase Order or any of these Terms and Conditions, including any question regarding the existence, validity or termination of a Purchase Order or any of these Terms and Conditions, shall be referred to and finally resolved by arbitration. The arbitration shall be governed by the Arbitration Act, 1965 of the Republic of South Africa (the Act), or any replacement Act and shall take place in accordance with the expedited commercial Arbitration Rules of the Arbitration Foundation of Southern Africa ("AFSA"), which Rules are deemed to be incorporated by reference into these Terms and Conditions specifically including a right to appeal. The number of arbitrators shall be 1 (one). The Parties shall agree on the arbitrator who shall be an attorney or advocate on the panel of arbitrators of AFSA. If agreement is not reached within 10 (ten) business days after any Party calls in writing for such agreement, the arbitrator shall be a Senior Counsel of no less than 10 (ten) years standing, as nominated by the Secretariat of AFSA for the time being. The seat or legal place of arbitration shall be Sandton or Cape Town, at the Buyer's election, in the Republic of South Africa. The language to be used in the arbitral proceedings shall be English.	
External Privacy Notice	https://ssa.pepsico.africa/privacy-notice	
Additional Terms	BBBEE: Broad-Based Black Economic Empowerment Should the Supplier be a South African entity or be trading under a South African registered entity, Supplier undertakes to provide the Buyer upon request with its contributor level 4 BBBEE rating certificate if the Supplier falls under Generic classification as well as QSE with less than 51% black ownership or the relevant Affidavit as outlined by the DTI if the Supplier falls under QSE with over 51% black ownership and EME classification in relation to broad-based black economic empowerment. Absent prior written approval by the Buyer, under no circumstances shall a Purchase Order be created with a Supplier that does not meet a minimum BBBEE contributor Level 4, where possible taking into account all permissible exclusions as outlined in the Agri score card clause 7.5.19 or the critical business needs as outlined in clause 9 of the PepsiCo SA Preferential Procurement, Enterprise and Supplier Development Policy.	

BUYER REGISTERED, EXISTING AND OPERATING IN THE REUBLIC OF BOTSWANA

Legal Entity and Domicilium citandi et executandi	<u>Bokomo Botswana (Pty) Ltd</u> (Registration number BW 00000167894)	Plot 17295, Molekangwetsi Crescent, Gaborone West, Phase 1, Gaborone, Botswana Email. legalssa@pepsico.com
Governing Law	Governing Laws of the Republic of Botswana	
Dispute Resolution	Any dispute arising out of or in connection with a Purchase Order or any of these Terms and Conditions, including any question regarding the existence, validity or termination of a Purchase Order or any of these Terms and Conditions, shall be referred to and finally resolved by arbitration. The arbitration shall be governed by the Arbitration Act, 2010 of the Republic of Botswana (the Act), or any replacement Act and shall take place in accordance with the expedited commercial Arbitration Rules of the Arbitration Foundation of Southern Africa (“AFSA”), which Rules are deemed to be incorporated by reference into this clause. The number of arbitrators shall be 1 (one). The Parties shall agree on the arbitrator who shall be an attorney or advocate on the panel of arbitrators of AFSA. If agreement is not reached within 10 (ten) business days after any Party calls in writing for such agreement, the arbitrator shall be a Senior Counsel of no less than 10 (ten) years standing, as nominated by the Secretariat of AFSA for the time being. The seat or legal place of arbitration shall be Gaborone in the Republic of Botswana. The language to be used in the arbitral proceedings shall be English.	
BUYER REGISTERED, EXISTING AND OPERATING IN THE REPUBLIC OF NAMIBIA		
Legal Entity and Domicilium citandi et executandi	<u>Bokomo (Namibia) (Proprietary) Limited</u> (Registration Number 1998/109)	Plot No 10, Brakwater, Windhoek, the Republic of Namibia
Governing Law	Governing Laws of the Republic of Namibia	
Dispute Resolution	Any dispute arising out of or in connection with a Purchase Order or any of these Terms and Conditions, including any question regarding the existence, validity or termination of a Purchase Order or any of these Terms and Conditions, shall be referred to and finally resolved by arbitration. The arbitration shall be governed by the Arbitration Act, 1965 of the Republic of Namibia (the Act), or any replacement Act and shall take place in accordance with the expedited commercial Arbitration Rules of the Arbitration Foundation of Southern Africa (“AFSA”) to include an agreed right to appeal, which Rules are deemed to be incorporated by reference into this clause. The number of arbitrators shall be 1 (one). The Parties shall agree on the arbitrator who shall be an attorney or advocate on the panel of arbitrators of AFSA. If agreement is not reached within 10 (ten) business days after any Party calls in writing for such agreement, the arbitrator shall be a Senior Counsel of no less than 10 (ten) years standing, as nominated by the Secretariat of AFSA for the time being. The seat or legal place of arbitration shall be Windhoek in the Republic of Namibia. The language to be used in the arbitral proceedings shall be English.	
BUYER REGISTERED, EXISTING AND OPERATING IN NIGERIA		
Legal Entity and Domicilium citandi et executandi	<u>Food Concepts Pioneer Ltd</u> (Registration Number RC1216675)	3/5 Kopek Street Warehouse, Off Fatai Atere Way, Mushin Industrial Area, Mushin, Lagos, Nigeria
	<u>PepsiCo Foods Nigeria Ltd</u> (Registration Number RC1514735)	3/5 Kopek Street Warehouse, Off Fatai Atere Way, Mushin Industrial Area, Mushin, Lagos, Nigeria
Governing Law	Governing Laws of the Federal Republic of Nigeria	
Dispute Resolution	Any dispute arising out of or in connection with a Purchase Order or any of these Terms and Conditions, including any question regarding the existence, validity or termination of a Purchase Order or any of these Terms and Conditions, shall be	

	<p>referred to and finally resolved by arbitration. The arbitration shall be governed by the Arbitration and Conciliation Act (ACA) Laws of the Federation of Nigeria 2004, or any replacement Act and shall take place in accordance with the Arbitration Rules of the Arbitration and Conciliation Act (ACA) Laws of the Federation of Nigeria 2004, which Rules are deemed to be incorporated by reference into this clause.</p> <p>The number of arbitrators shall be one. The Parties shall agree on the arbitrator who shall be an attorney or advocate. If agreement is not reached within 10 (ten) Business Days after any Party calls in writing for such agreement, the arbitrator shall be a Senior Counsel of no less than 10 (ten) years standing.</p> <p>The seat or legal place of arbitration shall be Lagos, Federal Republic of Nigeria.</p> <p>The language to be used in the arbitral proceedings shall be English.</p>
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