

## **TERMS AND CONDITIONS OF SALE OF AMKA PRODUCTS (PTY) LTD**

### **1. Contract**

- 1.1. All sales of goods by Amka Products (Pty) Ltd ("the Seller") to any customer, person or entity ("the Buyer") shall be governed by and subject to these Terms and Conditions of Sale.
- 1.2. Any order from a customer shall constitute an offer subject to these Terms and Conditions of Sale. Acceptance by Amka Products (Pty) Ltd shall be subject to confirmation in writing from an authorised representative of Amka Products (Pty) Ltd or by dispatch of goods to the customer.
- 1.3. These Terms and Conditions of Sale may be varied only in writing signed by an authorised representative of both parties.
- 1.4. Seller shall not be bound by, or be liable for any representations or warranties made by any employee or agent purporting to act on its behalf, unless such representation or warranty is reduced to writing and signed by a representative of Seller specifically authorised for such purpose.

### **2. Prices, discounts and interest**

- 2.1. Prices are per unit and payable in South African currency unless otherwise expressly stated.
- 2.2. The Seller may allow discount, alternatively rebates as specially agreed upon in provided always such an amount shall not be allowed on any goods where payment for any goods whatsoever invoiced prior thereto is overdue.
- 2.3. Unless otherwise agreed in writing, payment for goods shall become due to the Seller thirty (30) days after date of Seller's monthly statement reflecting the invoice for the goods. The Seller shall be entitled to charge the Buyer interest on all overdue amounts at the rate of two percent (2%) per month above the prime bank lending rate of Seller's bank from due date until the date payment is received by Seller.

### **3. Orders**

- 3.1. All orders shall be irrevocable and binding on the Buyer until accepted or declined by Seller who shall have the right to accept any order in whole or in part.
- 3.2. Each order and the acceptance thereof shall be subject to availability of stock and shall be deemed to be a separate contract in respect of the goods forming the subject matter of the contract.
- 3.3. Oral orders or orders placed by telephone or facsimile or telegram will be executed at the Buyer's sole risk, and the Seller accepts no responsibility for any errors arising out of execution of such order.
- 3.4. No orders shall be countermanded except with the written consent of the Seller and on terms which will indemnify the Seller against all loss.

### **4. Delivery**

- 4.1. The place where the goods will be delivered will, unless otherwise notified timeously in writing, be the Buyer's premises.
- 4.2. Delivery shall be deemed to take place at the time when the goods are dispatched from Seller's premises or, if the goods are not supplied from Seller's premises, at the time when the goods are dispatched to the Buyer from the premises of Seller's sub-contractor or supplier, whichever time occurs earlier.
- 4.3. All risks in the goods shall pass to the Buyer on delivery as provided for in 4.2.
- 4.4. The Seller shall not be liable for any loss or damage by reason of the non-delivery or late delivery of the goods or for any delay in executing delivery caused by force majeure, Acts of God, war, riots, civil

commotion, strikes, lockouts, transport delays, mechanical breakdown, restrictions by Government, non-availability or shortage of raw materials or stock and, without in any way being limited by the foregoing, generally, by any other cause beyond the control of the Seller.

- 4.5. Time shall not be of the essence of the contract. Any delivery date stipulated is approximate only. The Seller shall not be bound by that date but will make reasonable efforts to deliver the goods by that date. If no delivery date is stipulated then the Seller will deliver goods as soon as it can conveniently do so.
- 4.6. The Buyer shall be obliged to accept short deliveries or part deliveries of goods ordered. While reasonable effort will be made by Seller to deliver the goods ordered by the Buyer from time to time, Seller: (i) may deliver the goods in whole or in part, as and when the goods become available, and invoice the Buyer for part delivered; (ii) does not guarantee delivery on or by a specific date or time; (iii) shall have the right to cancel any order made by a Buyer should its fulfilment be unduly delayed, rendered impossible, impeded or frustrated by any event of force majeure or for any other cause or circumstance beyond the reasonable control of Seller.
- 4.7. Unless a claim for non-delivery or short delivery of goods is made in writing within one (1) calendar month of the date of the invoice on which the charge for such goods appear, no claim will be entered in respect thereof, and the Buyer will be deemed to have accepted in total the delivery reflected in such entry.
- 4.8. No claim of whatsoever nature shall be against the Seller for goods lost or damaged in transit, any carrier of the goods being deemed to be the agent of the Buyer, notwithstanding his direct employment by the Seller. If the Buyer has requested that Seller arrange for transportation of the goods for the Buyer, Seller shall be authorised to contract with a carrier on the Buyer's behalf on terms and conditions which it deems in its sole discretion to be appropriate. Any such transportation arranged by Seller shall be subject to the terms and conditions entered into with any such carrier and Seller shall have no responsibility or liability to the Buyer therefore or for any act or omission of the carrier. Seller shall not be obliged to arrange or provide any insurance cover for the goods in transit. The cost of any such carrier shall be borne by the Buyer as an additional charge separate from the purchase price of the goods.
- 4.9. Without derogating from the generality of the foregoing, strikes, differences with workmen, accidents to machinery, failure of usual sources of supply of materials, war, civil commotions, acts of terrorism, commercial exigencies, acts of government or quasi government or legislation, unavailability of stock or raw materials or other contingencies beyond the control of the Seller, shall be sufficient excuse for any delay in or suspension of delivery. The Seller may, after the occurrence of any such contingency, if requested in writing by the Buyer, cancel the order without liability and without any claim upon it by the Buyer.
- 4.10. No claims in respect of goods delivered or collected shall be entertained unless submitted by the Buyer in writing to the Seller within seven (7) days of receipt of the goods, failing which any claim shall become forfeited and prescribed, and the goods shall be deemed to have been received in all respects in compliance with the order, including but not limited to, the quality and quantity thereof. Once the goods have been resold or cut the Buyer shall have no claim against the Seller in respect of the goods under any circumstances whatsoever.

## **5. Returns**

- 5.1 The Buyer shall not be entitled to return any goods unless this has been expressly agreed to in writing by an authorised representative of Seller and such representative has issued the Buyer with an authorization number for such return.
- 5.2 Goods returned without the written authorisation and consent of the Seller shall not be accepted for credit and the Seller shall at its option be entitled to: -
  - (i) return the same to the Buyer at the Buyer's expense, or
  - (ii) retain the same, in which event it shall be entitled to hold goods as a pledge in respect of the Buyers' indebtedness to it, albeit liquidated or unliquidated.

5.3 The Seller may, at its option and in its sole discretion elect to accept return of the goods in which event the Seller shall be entitled to levy a handling fee equivalent to ten percentum (10%) of the selling price of the returned goods. This handling fee shall be payable by the Buyer thirty (30) days net from the date of the original invoice.

## **6. Breach**

If the Buyer: -

- 6.1 fails to make any payment on due date, or if any cheque, promissory note or other bill of exchange given to the Seller in respect of any indebtedness of the Buyer under the contract is dishonoured, or
- 6.2 is sequestrated or liquidated (provisionally or finally), commences business rescue proceedings, or is placed under winding up or under judicial management, or
- 6.3 endeavours to or enters into any compromise with any of its creditors, or
- 6.4 fails to satisfy any judgement granted against it within seven days after the date of judgement, or
- 6.5 breaches any of its obligations under these Terms and Conditions of Sale and/or any contract with the Seller, all of which are deemed to be material, or
- 6.6 permits, whether voluntary or otherwise, the goods to be seized under legal process issued against the Buyer by any party, or
- 6.7 disposes of any of its assets other than in the normal and ordinary course of business,

then and in any such event the Seller shall have the right and option, without prejudice and in addition to all other rights and remedies under these Terms and Conditions or otherwise in law to: -

- (a) continue to enforce its rights and recover from the Buyer such payments and any other amounts owing as and when these shall fall due, and/or
- (b) claim immediate payment of all monies owing by the Buyer to the Seller whether same is due for payment at such time or not, and notwithstanding the terms in respect of any earlier agreement for credit, and/or
- (c) cancel any contracts with the Buyer and upon which event the Buyer shall immediately return all goods to the Seller and the Buyer shall in addition be liable to the Supplier for any loss or damage, and/or
- (d) withhold delivery of and/or cancel any pending orders and/or take steps to repossess the goods from the Buyer.

Any claim for payment of monies or any cancellation by Seller shall inter alia be without prejudice to any accrued claims against the Buyer, including but not limited to any claims which Seller may have for damages.

Notwithstanding anything to the contrary in these Terms and Conditions of Sale, the Seller shall be entitled at any time and in its discretion to restrict, limit or cancel any credit facilities granted to the Buyer and shall furthermore be entitled to require the Buyer to furnish further and/or additional security for any amounts due in terms of any contract with the Buyer.

## **7. Change in control**

The Buyer undertakes that in the event of its business being sold or in the event of a sale or transfer of its shares (if a company) or members interest (if a close corporation) taking place, which will vest control of the Buyer in others formerly not in control of the Buyer, to immediately and promptly advise the Seller thereof in writing. Upon such notification the Seller shall be entitled to review any credit facilities granted to the Buyer and shall furthermore be entitled to require the Buyer to furnish further and/or additional security for

any amounts due in terms of any contract with the Buyer. The Buyer shall notwithstanding in any event remain responsible for all amounts owing and all goods ordered in the name of the Buyer or its business.

## **8. Warranties**

- 8.1. Subject to section 51 (1) (g) of the Consumer Protection Act all goods are manufactured in accordance with the Seller's standards of quality. The Seller gives no warranty of any nature whatsoever whether express or implied that the goods supplied are suitable for the purpose for which they are bought and all implied and/or common law warranties are specifically excluded, including but not limited to the implied warranty as to latent defects.
- 8.2. In no event whatsoever will the Seller be responsible for damages whether consequential or otherwise of whatsoever nature and kind and howsoever arising, including through the negligence on the part of the Seller, its agents or servants.
- 8.3. Each of the terms herein contained excluding liability on the part of the Seller shall be a separate and divisible term, and if any term becomes unenforceable for any reason whatsoever, that term shall not affect the validity of the other terms.

## **9. Ownership**

Notwithstanding that all risks in and to the goods sold by the Seller to the Buyer shall pass on delivery, ownership in all goods shall remain vested in the Seller until the full purchase consideration in respect thereof shall have been paid. In the event of a breach of contract by the Buyer then without prejudice to any other rights vested in the Seller, the Seller shall be entitled to forthwith retake possession of the goods.

## **10. Certificate**

A certificate signed by any manager of Amka Products (Pty) Ltd (whose appointment and authority need not be proved) stating the amount of the Buyer's indebtedness to Amka Products (Pty) Ltd in respect of the Buyer's account, shall be prima facie proof in any legal proceedings, of the Buyer's indebtedness to the Seller.

## **11. Credit Record**

The Buyer hereby acknowledges and agrees that Seller may : (a) perform a search on the Buyer's credit record with one or more of the Buyer's other creditors and with one or more credit bureaux when assessing the Buyer's application for credit; and/or (b) obtain information on the Buyer's credit record with its bank (and the Buyer hereby authorises its bank to release such information to Seller on written request from Seller); and/or (c) monitor the Buyer's payment behaviour by searching the Buyer's record at one or more of the credit bureaux; and/or (d) use information and data obtained from credit bureaux in respect of the Buyer's credit applications; and/or (e) record the existence of the Buyer's account with any credit bureaux; and/or (f) record and transmit details of how the account is conducted by the Buyer in meeting the Buyer's obligations on the account. The Buyer acknowledges and agrees that any information regarding the Buyer's credit worthiness, defaults in payment and details of how the Buyer's account with Seller is conducted may be disclosed to any other creditor of the Buyer or to one or more credit bureaux.

## **12. Brand Names and Trade Marks**

The use of the name "Amka" and the use of any brand names, trade marks, symbols and/or logos of any goods supplied by Seller from time to time ("the Seller Brand Names") is strictly prohibited unless the Buyer has first obtained the written authorisation of Seller, which authorisation may be revoked by Seller at any time and shall be on such terms and conditions as Seller may, from time to time, in its sole and absolute discretion determine. Accordingly, and without derogating from the generality of the foregoing, the Buyer shall not be entitled to advertise, display or publish the Seller Brand Names other than in strict conformity with the terms and conditions of any express authorisation as Seller may in its discretion grant in writing to the Buyer. The Buyer acknowledges that the reputation and goodwill of the Seller Brand Names are based upon a distinctive high standard and quality and agrees that the locations authorised by Seller for the

disposal of goods bearing the Seller Brand Names must conform to Seller's quality standards and may be inspected at any time during normal working hours by a representative of Seller. The Buyer further agrees that if at any time the general state of repair, appearance, cleanliness, signs, or décor at any of the Buyer's locations does not meet the quality standards of Seller (as determined in Seller's sole discretion) the Buyer shall be required to correct such deficiencies upon receipt of notice thereof from Seller, and if the Buyer fails or refuses to correct any such deficiencies within 3 (Three) days after receipt of such notice, Seller shall be entitled by notice to the Buyer to revoke the Buyer's rights to display the Seller Brand Names and/or to prohibit the Buyer from selling any goods bearing the Seller Brand Names at such location until such deficiencies in the premises are rectified to the satisfaction of Seller.

### **13. Revlon Realistic and Revlon Realistic Natural Honey branded goods**

- 13.1. The Buyer accepts and agrees that any contract for the purchase of any goods and products bearing the **REVLON REALISTIC** mark, whether such mark may be used on its own or conjoined with other marks, shall be subject to the express condition that Buyer may not ship, on-sell or resell, directly or through an intermediary, any such goods and products in or to any person in the following territories: **India, Sudan, Nepal, Cuba, Iran, Bhutan, Syria and North Korea.**
- 13.2. The Buyer accepts and agrees that any contract for the purchase of any goods and products bearing the **REVLON REALISTIC NATURAL HONEY** mark shall be subject to the express condition that Buyer may not ship, on-sell or resell, directly or through an intermediary, any such goods and products in or to any person in the following territories: **Sudan** or any country outside the continent of Africa. The continent of Africa denotes the geographical continent and includes **Mauritius, Reunion, Madagascar, Comores, Seychelles, Cape Verde and Zanzibar.**
- 13.3. The restrictive provisions relating to territoriality in respect of goods and products under the **REVLON REALISTIC** mark, whether such mark be used on its own or conjoined with other marks, and in respect of goods and products of the **REVLON REALISTIC NATURAL HONEY** mark shall be binding on the Buyer and such terms are material to the contract of purchase and sale.

### **14. General**

- 14.1. A signature by the Buyer's personnel or any representative or agent of Buyer on the delivery notes of Seller or any of its sales divisions and/or subsidiaries and/or shipping agents shall be deemed, for all purposes, to be sufficient proof of acknowledgement of receipt of goods by the Buyer.
- 14.2. No relaxation, indulgence or extension of time which Seller may grant at any time in regard to the carrying out of any of the obligations of the Buyer in terms of any contract shall prejudice, or constitute a novation or waiver of any of the rights of Seller in terms of any contract. No terms and conditions contained in any of the Buyer's documents shall be of any force or effect unless specifically and expressly accepted by Seller in writing. No variation or consensual cancellation of any contract or any of these terms and conditions will be effective unless in writing and signed by an authorised representative of Seller. Seller shall be entitled to vary these terms and conditions at any time by written notice to the Buyer. The Buyer shall not have the right to cede, delegate, assign or sub-contract any of its rights or obligations without Seller' prior written consent.
- 14.3. If any of provision of these Terms and Conditions of Sale are found to be unenforceable or invalid, such provision shall be deemed to be severable from and shall not invalidate the remainder of these Terms and Conditions of Sale which shall remain of full force and effect.
- 14.4. The Seller shall not under any circumstances be responsible or liable for any indirect or consequential loss or damage or loss of profits which the Buyer or any third party may suffer by whatsoever reason and howsoever caused or arising, and the Buyer hereby indemnifies Seller in respect of any and all such claims by third parties. Any liability of Seller to the Buyer shall in any event be limited to (i) the actual amount of the direct loss or damage, or (ii) the value of the goods under the contract in question, whichever is the lesser.
- 14.5. South African law will govern and apply to the contract and all orders, dealings and litigation between Seller and the Buyer and any sureties who bind themselves in favour of the Seller.

- 14.6. In terms of Section 45 of the Magistrates Court Act No 32 of 1994, as amended, the Buyer and any person(s) who sign as surety/s consent to the jurisdiction of the Magistrates Court having jurisdiction in respect of the Buyer or the said person(s) by virtue of such Act, however such consents shall not preclude Seller at its election from instituting proceedings in any other court of competent jurisdiction.
- 14.7. The Seller in its sole and absolute discretion may appropriate any payment made by the Buyer to any cause of indebtedness as may be owed by the Buyer to the Seller.
- 14.8. In the event of Seller instructing its attorneys to institute proceedings against the Buyer or to recover money or goods from the Buyer, the Buyer shall be liable for and shall pay all legal costs incurred by Seller on the attorney and client scale including collection commission.
- 14.9. The Buyer acknowledges that the sale of the goods shall not be subject to any conditions save as are expressly contained in these Terms and Conditions of Sale, and that the goods are not supplied on a "Consignment" or "Sale or Return" basis unless expressly agreed to in writing in advance by an authorised representative of Seller.
- 14.10. The address of the Buyer reflected on any application for credit submitted by the Buyer to the Seller is selected by Buyer as its chosen *domicilium citandi et executandi* for all purposes hereunder. All notices (including but not limited to any notice in terms of section 129 of the National Credit Act) sent to the Buyer or a surety by prepaid registered post at their *domicilium citandi et executandi* shall be deemed to have been received five (5) days after the date of posting, provided that a notice sent by post, hand delivery, fax or email, and received by the Buyer or a surety, shall be valid and effective service of such notice, notwithstanding that it is not sent to the Buyer's or the surety's *domicilium citandi et executandi*.
- 14.11. The headnotes to these conditions are for reference purposes and do not affect the content thereof. In these Terms and Conditions of Sale, the *contra proferentem* rule shall not apply, and unless inconsistent with the context, words signifying any one gender shall include the other genders, the singular shall include the plural and vice versa and words signifying natural persons shall include trusts and incorporated entities and vice versa, and any reference to "days" shall mean calendar days.