

STANDARD TERMS OF SALE TO INTERNATIONAL CUSTOMERS
GOEDE HOOP VRUGTE (PTY) LIMITED ("GHV")
("Standard Terms")

1 STATUS OF TERMS AND CONDITIONS

A Sale Agreement for the sale and purchase of Products comes into existence upon the acceptance by the Purchaser of a Sale Offer made by GHV to the Customer.

2 CANCELLATION OF SALE AGREEMENT

GHV shall be entitled to cancel a Sale Agreement or any part thereof if the supply of the Products by GHV in terms of the Sale Agreement is rendered impossible as a result of circumstances beyond its control, including but not limited to one or more of the following circumstances: drought, excessive rainfall, hail, disease, heatwaves and/or any failure or delay of any nature by the Customer or third party producers.

3 TRANSFER OF RISK AND OWNERSHIP

3.1 Subject to 3.2 hereunder ownership in respect of the Products and all the benefit in respect thereof will transfer to the Customer on the later of:

3.1.1 the date prescribed by the Selected Incoterms; or

3.1.2 the date that the Customer has paid the Purchase Price for the Products.

3.2 Risk in respect of the Products will transfer to the Purchaser on the date prescribed by the Selected Incoterms.

4 COMPLIANCE WITH LAWS

It is the Customer's responsibility to inform GHV of all Laws, rules, statutes, regulations and requirements by any and all public authority, local or national government body or institutions applicable to the Products and/or packaging thereof in the country of destination ("**Applicable Laws**") to which the Products will be

delivered, and/or any changes or proposed changes to any such Applicable Laws as soon as reasonably possible, in order to enable GHV to duly adapt the Products in respect of such country, if GHV is able to do so, and nothing herein contained shall be regarded as placing an obligation on GHV to agree to affect such changes to the Products and/or packaging.

5 **DEPOSIT**

GHV shall in its discretion be entitled to require that a percentage of the Purchase Price be paid prior to delivery of the Products, which will serve as a deposit and which will be kept in a trust account. The Customer shall pay it to GHV on the terms as specified on the Sale Offer. The deposit may be applied by GHV as a cancellation fee in the event that the Customer cancels a Sale Agreement.

6 **PURCHASE PRICE AND PAYMENT**

- 6.1 The Purchase Price payable for the Products is recorded in the Sale Offer.
- 6.2 The Customer shall pay interest to GHV on any amount owing to it in terms of the Sale Agreement which is not paid on the due date. Such interest will be calculated on such amount at 2% per calendar month, which interest will be calculated daily and compounded monthly until GHV has received payment of all monies owing to it. The interest will be payable immediately as and when it accrues.
- 6.3 Failing specific arrangements to the contrary in writing in the relevant Sale offer, the Purchase Price for the Products or any portion thereof shall be due and payable to GHV in the currency recorded in the Sale Agreement on the date of delivery of the Products to the Customer.
- 6.4 Should any discrepancy appear between the Sale Agreement and the GHV invoice, it will be incumbent on the Customer to notify the account manager of GHV within 24 hours from receipt of the invoice in order to resolve such issue without delay. If the Customer failed to report any discrepancy, the price on the Invoice will be regarded as correct, unless the discrepancy is to the detriment of GHV, in which instance GHV will retain the right to correct the invoice.

- 6.5 Notwithstanding the Selected Incoterms, ownership of the Products shall not pass to the Customer, but shall remain with GHV until payment of the Purchase Price has been received in full by GHV
- 6.6 All payments will be made by way of electronic funds transfer into the nominated bank account of GHV.
- 6.7 The Customer has no right to withhold payment for any reason whatsoever and the Customer is not entitled to set off any amount due to the Customer by GHV against the Purchase Price or any other debt owed by the Customer to GHV, nor may the Customer withhold any payment by virtue of any alleged counterclaim against GHV by the Customer.
- 6.8 A certificate under signature of any director or financial manager of GHV whose authority shall not be necessary to prove, shall be prima facie proof of the amounts owing by the Customer to GHV and also of the fact that the amount so stipulated is already due and payable with any interest payable thereon.

7 **COSTS**

The Customer shall reimburse GHV for any additional expenses and costs incurred by GHV in respect of the Products, which expenses and costs include but are not limited to –

- 7.1 the costs of storage of the Products that the Customer has not taken delivery of during the Delivery Period as defined in the Sale Offer;
- 7.2 the cost of storage of any Products, arising from the transport contractor arranged by the Customer to collect the Products not accepting delivery by GHV of the Products;
- 7.3 the costs of adapting the Products and/or their packaging in order to comply with Applicable Laws;

- 7.4 any additional shipping instructions or requirements of the Customer (other than as specified on the Sales Offer);
- 7.5 any duties or levies levied in respect of the export of the Products from South Africa to the country of destination; and
- 7.6 the amount of any or all taxes or other government charges or duty in respect of the sale and or delivery of the Products payable to an authority of the Republic of South Africa or any other relevant country,

all of which costs and expenses shall be for the sole cost of the Customer, and which costs shall be payable by the Customer to GHV within 14 (fourteen) days after written demand has been made by GHV for the payment thereof.

8 WARRANTIES AND GUARANTEES

- 8.1 No warranties, guarantees or representations, express or implied or tacit whether by law, contract or otherwise and whether they induced the Sale Agreement or not, which are not recorded in herein or in the Sale Offer shall be binding on or enforceable against GHV.
- 8.2 The Customer declares that it is fully acquainted with the quality and other attributes of the Products purchased.
- 8.3 Subject to clause 10 hereunder, the Products are sold and purchased "as is" and GHV shall not be liable for any latent or patent defects in the Products.
- 8.4 The Customer shall not, in on-selling or distributing the Products, advertise or issue or in any other way give or make any warranties, guarantees or representations as to the Products in any form whatsoever or offer to do so, which could result in a liability being imposed upon GHV.
- 8.5 Furthermore, any claim for losses or damages that may be instituted by the Customer against GHV arising from the Sale Agreement shall be limited to and not exceed the Purchase Price of the Products.

- 8.6 Any claims, losses, costs or damages, arising from events or actions after delivery of the Products to the Customer shall be the sole responsibility and risk of the Customer, who hereby indemnifies GHV against any and all such claims.

9 **LIMITATION OF DAMAGES AND INDEMNITY**

- 9.1 GHV shall have no liability in respect of any injury, loss or damage (direct, indirect or consequential) arising out of the use of, or inability to use, or consumption of the Products except to the extent occasioned by GHV's gross negligence or wilful intent.
- 9.2 Under no circumstances will GHV be liable to the Customer or any third party for special, indirect or incidental or consequential damages, howsoever arising, including without limitation, any loss of revenue or loss of profits or any damages suffered by the Customer or third parties.
- 9.3 The Customer indemnifies GHV and undertakes to on demand from GHV hold GHV harmless against any and all losses, damages or claims, costs, expenses howsoever arising in respect of or by reason of the Products, except to the extent that any Products do not comply with the Quality Standards in which event the provisions of clause 10 will apply and in which case the remedy in clause 10 will be the sole remedy of the Customer and/or any third party in respect of such defective Products.
- 9.4 GHV will take all the reasonable steps to procure delivery of the Products during the Delivery Period. However GHV will not be liable for failing to deliver the Products during the Delivery Period (as described in the Order), it being recorded that the Delivery Period merely saves as an estimated period during which GHV will take all the reasonable steps to procure delivery of the Products. In the event that the Products are not delivered during the Delivery period, GHV will deliver the Products as soon as possible thereafter. GHV will not be responsible for any damages or losses arising from the failure to deliver the Products during the Delivery Period nor will the Customer be entitled to cancel the Contract, if GHV does not deliver the Products during the Delivery Period.

10 QUALITY CLAIM PROCEDURE

- 10.1 Any quality issue relating to Products delivered must be notified in writing to GHV by the Customer (which notice must contain an estimate of the value of such claim), within 72 hours of delivery of the Products, failing which it shall be deemed that the Products comply with the Quality Standards.
- 10.2 Pending determination of any quality issue, all Products must be stored at the correct temperature and may not be re-packed or sold before a quality control report ("**QC Report**"), compliant with 10.3, has been compiled by a quality controller, appointed by the Customer (at the cost of the Customer) and approved by GHV.
- 10.3 All QC Reports must contain at least the following information:
- 10.3.1 pallet ID barcodes;
 - 10.3.2 PUC code(s) on the cartons or bins which have quality issues;
 - 10.3.3 temptale readings;
 - 10.3.4 photos that show the quality issues, also photos that show the pallet id barcodes and PUC codes; and
 - 10.3.5 the amount (percentage) and type of defects found.
- 10.4 All QC Reports need to be sent to GHV's quality control manager, as well as to the relevant account manager.
- 10.5 In the event of a dispute, either the Customer or GHV shall be entitled to refer the matter to an independent quality controller ("**Expert**") appointed by agreement between the parties to the dispute ("**Parties**") or, failing agreement within 48 hours after either Party has requested approval by the other Party of an Expert, to be appointed by GHV.

- 10.6 If a dispute is referred to the Expert for determination, the Expert will determine the dispute as follows:
- 10.6.1 the Expert shall investigate the dispute or matter in such manner as he in his sole discretion considers appropriate, provided that it shall be done as a matter of urgency and finally determined within 5 days after appointment;
- 10.6.2 the Expert shall be entitled to call on the Parties to make written representations and/or consult with either or both of the Parties or with any other person and to take advice from any third party;
- 10.6.3 in the absence of a manifest error, the determination of the Expert shall be final and binding on the Parties; and
- 10.6.4 the costs and charges of the Expert shall be borne by the Party which, in the sole discretion of the Expert, is the appropriate party to bear such charges, provided that the Expert shall be entitled to direct that the costs and charges be borne by the Parties in such ratios as he, the Expert, may determine.

11 **DISPUTES**

- 11.1 Any disputes arising from or in connection with the Sale Agreement or the termination thereof shall (save as provided for in 10) be finally resolved in accordance with the rules of Arbitration Foundation of Southern Africa (or its successor in title) by an arbitrator agreed to in writing by the Parties or, failing such agreement within seven days after it is requested by any Party, appointed by AFSA. There shall be a right of appeal as provided for in article 22 of such rules.
- 11.2 Notwithstanding anything to the contrary contained in this 11, any Party shall be entitled to –
- 11.2.1 apply for an interdict; and/or

11.2.2 obtain interim relief on an urgent basis pending the decision of the arbitrator, from any competent court having jurisdiction.

11.3 For the purposes of 11.2 and for the purposes of having any award made by the arbitrator being made an order of court, each of the Parties hereby submits itself to the non-exclusive jurisdiction of the High Court of South Africa, Western Cape Division, Cape Town.

12 DOMICILIUM AND NOTICES

12.1 The Parties choose *domicilium citandi et executandi* ("**Domicilium**") for all purposes relating to this Agreement, including the giving of any notice, the payment of any sum, and the serving of any process, as follows -

12.1.1 GHV: its addresses on the Sales Offer; and

12.1.2 the Customer: the address and email address of the Customer as reflected on the GHV International Customer Information Sheet of the Customer held by GHV.

12.2 Any Party shall be entitled from time to time, by giving written notice to the other, to vary its physical *Domicilium* to any other physical address (not being a post office box or *poste restante*) and to vary its email *Domicilium* to any other email address.

12.3 Any notice given or payment made by any Party to any other ("**Addressee**") which is delivered by hand between the hours of 09:00 and 17:00 on any Business Day to the Addressee's physical *Domicilium* for the time being will be deemed to have been received by the Addressee at the time of delivery.

12.4 Any notice given by any Party to any other which is successfully transmitted by email to the Addressee's email *Domicilium* for the time being will be deemed (unless the contrary is proved by the Addressee) to have been received by the Addressee on the date of successful transmission thereof or, if such date is not a Business Day, on the next day which is a Business Day.

12.5 This clause 12 shall not operate so as to invalidate the giving or receipt of any written notice which is actually received by the Addressee other than by a method or address referred to in this clause 12.

12.6 Any notice in terms of or in connection with this Agreement will be valid and effective only if in writing and if it is received, or deemed to have been received, by the Addressee.

13 **BREACH**

Should any Party materially breach any essential provision of the Sale Agreement and fail to remedy such breach within seven days after receiving written notice requiring such remedy, then the aggrieved Party shall be entitled, without prejudice to its other rights in terms of the Sale Agreement or in law, including any right to claim damages, to claim immediate specific performance of all of the defaulting Party's obligations then due for performance or to cancel the Sale Agreement.

14 **GENERAL**

14.1 This Sale Agreement constitutes the sole record of the agreement between the Parties in relation to the subject matter hereof. Neither Party shall be bound by any express, tacit or implied term, representation, warranty, promise or the like not recorded herein. This Sale Agreement supersedes and replaces all prior commitments, undertakings or representations, whether oral or written, between the Parties in respect of the subject matter hereof.

14.2 No addition to, variation, novation or agreed cancellation of any provision of this Sale Agreement shall be binding upon the Parties unless reduced to writing and signed by or on behalf of the Parties.

14.3 No waiver, indulgence or extension of time which either Party ("Grantor") may grant to the other, nor any delay or failure by the Grantor to enforce, whether completely or partially, any of its rights, shall constitute a waiver of or, whether by estoppel or otherwise, limit any of the existing or future rights of the Grantor in terms hereof, save in the event and to the extent that the Grantor has signed a written document expressly waiving or limiting such right.

- 14.4 Save as expressly provided in this Sale Agreement, neither Party shall be entitled to cede, delegate, encumber, assign or otherwise transfer any of its rights and/or obligations in terms of, and/or interest in, this Sale Agreement to any third Party without the prior written consent of the other Party.
- 14.5 No consent or approval in terms of or in connection with this Sale Agreement shall be valid or effective unless in writing and signed by or on behalf of the Party giving such consent or approval.
- 14.6 Unless otherwise expressly stipulated in this Sale Agreement, each Party to this Agreement contracts as a principal and not as an agent for any other Person, disclosed or undisclosed.
- 14.7 Without prejudice to any other provision of this Sale Agreement, any successor-in-title, including any executor, heir, liquidator, business rescue practitioner, curator or trustee, of either Party shall be bound by this Sale Agreement.
- 14.8 The signature by either Party of a counterpart of the Purchase Order shall be as effective as if that Party had signed the same document as the other Party.
- 14.9 Each Party warrants to the other that it has the legal powers, capacity and authority required to conclude and implement this Sale Agreement and that such conclusion and implementation do not conflict with any obligation or restriction applicable to such Party, whether in terms of any law, its constitution (if applicable) or otherwise.
- 14.10 The Sale Agreement shall in all respects (including its existence, validity, interpretation, implementation, termination and enforcement) be governed by the law of South Africa which is applicable to agreements executed and wholly performed within South Africa.
- 14.11 No extension of time or any other relaxation or indulgence granted by GHV to the Customer shall operate as or be deemed to be a waiver by GHV of any of its rights in terms hereof nor a novation of any of these terms and conditions.

- 14.12 Each provision of the Sale Agreement severable, the one from the other, and if at any time any provision is or becomes or is found to be illegal, invalid, defective or unenforceable for any reason by any competent court, the remaining provisions shall be of full force and effect and shall continue to be of full force and effect.
- 14.13 The Standards Terms, read with the Sale Offer and the Selected Incoterms comprises the entire Sale Agreement between GHV and the Customer. Alterations or additions to the Sale Agreement may only be effected by written agreement between GHV and the Customer.
- 14.14 To the extent that any of the terms of the Sale Agreement as recorded in these Standard Terms or in the Sale Offer ("**Other Terms**") are in conflict with any of the Selected Incoterms, the Other Terms will enjoy preference and be binding on the Parties and not those Selected Incoterms that are in conflict with the Other Terms

15 DEFINITION

In the Sale Offer and in the Standard Terms, unless the context wherein used dictates otherwise, the following terms will have the meaning assigned to it hereunder:

"Customer" means the person or other entity defined as such on the Sale Offer;

"GHV" means GOEDE HOOP VRUGTE PROPRIETARY LIMITED (RF), Registration number 1991/004490/07 (incorporated in accordance with the applicable laws of the Republic of South Africa);

"Incoterms" means Incoterms 2020 published by the International Chamber of Commerce;

"Parties" mean GHV and the Customer;

"Products" means the quantity of fruit described on the Sale Offer;

"Purchase price" means the total purchase price payable by the Customer for the Products as described on the Sale Offer;

"Quality Standards" means the quality standards defined in the Sale Offer;

"Sale Agreement" means the sale agreement that came into being between GHV and the Customer when the Purchaser accepted the Sale Offer and comprising of the terms recorded in the Sale Offer, the Standard Terms and the Selected Incoterms;

"Sale Offer" means the offer by GHV to the Customer in terms whereof GHV offers to purchase the Products from GHV;

"Selected Incoterms" means the Incoterms selected in the Sale Offer;

ACCEPTANCE OF TERMS

Signed at _____ **on the** _____ **day of** _____ **20**_____

For and on behalf of _____

Name: _____

Position: _____

<p>Witness:</p> <p>_____</p> <p>Name:</p>
