

# TERMS AND CONDITIONS OF SALE

## 1. Contract

This contract contains the entire Contract of Sale between Buyer and Seller and may be varied only in writing signed by both parties.

## 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 provided always such an amount shall not be allowed on any goods despatched where payment for any goods whatsoever invoiced prior thereto is overdue.
- 2.3 The Seller shall be entitled to charge the customer interest at the rate of two percent per month above the prime bank lending rate on all accounts outstanding in excess of thirty days from the due date.

## 3. Orders

- 3.1 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.
- 3.2 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 Unless otherwise stated delivery shall be affected at the Buyer's premises.
- 4.2 The Seller shall not be liable for any loss or damage by a reason of the non-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 and without in any way being limited by the foregoing, generally, by any other cause beyond the control of the Seller.
- 4.3 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.
- 4.4 Unless a claim for non-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.
- 4.5 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.
- 4.6 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, 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 any claim upon it by the Buyer, failing which the Seller shall complete delivery as soon as possible.
- 4.7 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. 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 Goods returned without the written consent of the Seller shall not be accepted for credit and the Seller shall at its option be entitled to:
  - 5.1.1 return the same to the Buyer at the Buyer's expense, or
  - 5.1.2 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.
- 5.2 The Seller may, at its option elect to accept return of the goods in which event the Seller shall be entitled to levy a handling fee equivalent to ten per centum (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
  - 6.2 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
  - 6.3 is sequestrated or placed under winding up or under judicial management (Provisionally or finally), or
  - 6.4 endeavours to or enters into any compromise with any of its Creditors, or
  - 6.5 fails to satisfy any judgement granted against it within seven days after the date of judgement, or
  - 6.6 breaches any of the terms of any contract all of which are deemed to be material, or
  - 6.7 permits, whether voluntary or otherwise, the goods to be seized under legal process issued against the Buyer by any party.

Then in such event the Seller shall have the right and option, without prejudice, and in addition to all other rights hereunder, 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, or
- (b) claim immediate payment of all monies due by the Buyer to the Seller notwithstanding the extended terms in respect of any agreement for credit, or

- (c) cancel the contract with the Buyer and upon which event the Buyer shall immediately return the goods to the Seller and the Buyer shall in addition be liable to the Supplier for any loss or damage.

## 7. Change in control

The Buyer undertakes that in the event of its business being sold or in the event of the Buyer being a company a sale of its shares taking place, which will vest control of the Buyer in others formerly not in control of the Buyer, to immediately advise the Seller thereof in writing. The Buyer shall notwithstanding in any event remain responsible for all goods ordered in the name of the Buyer or its business until such time as the Seller shall in writing release the Buyer from such liability, the Seller being not obliged to do so.

## 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 the implied warranty as to latent defects is hereby expressly excluded.
- 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 the goods sold and delivered 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 relaike 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.

## 11. General

- 11.1 A signature by the Buyer or any of the Buyer's employees on the delivery notes of Amka Products (Pty) Ltd. or any of its sales divisions and/or subsidiaries shall be deemed, for all purposes, to be sufficient proof of acknowledgement of receipt of goods by the Buyer.
- 11.2 No concession, latitude or indulgence allowed by the Seller to the Buyer shall be construed as a waiver or abandonment of any of its rights hereunder or act as any estoppel against the Seller.
- 11.3 If any of the terms and conditions herein contained shall be invalid, the same shall not invalidate the remainder of the contract.
- 11.4 The Seller will not be responsible for any consequential loss or damage or loss of profits which the Buyer may suffer by reason of the Seller's failure to carry out any of its obligations to the Buyer.
- 11.5 The Seller shall at its option and notwithstanding that the amount of its claim or the nature of the relief sought by it exceeds the jurisdiction of the Magistrate's Court, be entitled to institute action out of such Court. Nothing herein contained shall invalidate the Seller's rights to proceed in any other Court of competent jurisdiction.
- 11.6 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.
- 11.7 In the event of the Seller referring any dispute between it and the Buyer, or any amount due for collection by the Buyer to it, or to its attorneys arising out of or connected with the contract, the Buyer shall be liable to and hereby indemnifies the Seller against all costs, charges and expenses incurred as between attorney and client and such indemnity shall be extended to and include collection commission as may be lawfully charged to the Seller by its attorneys.
- 11.8 The address of the Buyer reflected on any application for credit submitted by him to the Seller is selected by him as his chosen domicile and et executandi for all purposes hereunder.
- 11.9 The headnotes to these conditions are for reference purposes and do not affect the content thereof.

## 12. Additional Terms and Conditions to Amka's Terms and Conditions of Trading

- 12.1 Amka's customer accepts that it acquires goods and products under the REVOLON REALISTIC mark, whether such mark may be used on its own or conjoined with other marks, from Amka on the express condition that it may not resell, directly or through an intermediary, any such goods and products in the following territories: India, Sudan, Nepal, Cuba, Iran, Bhutan, Syria and North Korea
- 12.2 Amka's customer further accepts that it acquires goods and products under the REVOLON REALISTIC NATURAL HONEY mark from Amka on the express condition that it may not resell, directly or through an intermediary, any such goods and products in 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
- 12.3 Without derogating from the generality of the acceptance of Amka's customer of all Amka's terms and conditions of sale, Amka's customer confirms that it has read, understood and had regard to the terms relating to territoriality in respect of goods and products under the REVOLON REALISTIC mark, whether such mark be used on its own or conjoined with other marks, and in respect of goods and products of the REVOLON REALISTIC NATURAL HONEY mark and that such customer understands that these terms bind the customer and furthermore that the terms are material to the contract of purchase and sale.