

PROTECTED CASH FACILITY : FULL TERMS AND CONDITIONS (as referred to in the Protected Cash Facility Application Form)

WHEREAS CTM operates a fresh produce market in Epping Industrial, generally known as the Cape Town Market and the Buyer intends to buy fresh produce from one or more of the Market agents. And whereas CTM has made a protected cash card facility available to buyers at the Cape Town Market in terms whereof the buyers can safely deposit cash with CTM, and then utilize such deposited cash for the purchase of fresh produce from the Market agents. And whereas the Buyer intends to make use CTM's protected cash card facility

NOW THEREFORE THE PARTIES AGREE AS FOLLOWS:

1. Interpretation

1.1 In these Terms and Conditions, unless the context clearly indicates otherwise:

1.1.1 the following words shall bear the following meanings:

1.1.1.1 **"Buyer"** shall mean the person entering into this agreement with CTM, the details of which / whom have been set out on the Protected Cash Facility application form.

1.1.1.2 **"Buyer's Card"** shall mean a plastic electronic card linked to the Protected Cash Facility for *inter alia* authorising payments in respect of transactions conducted at the Market by way of reducing the Buyer's credit balance on his account with CTM;

1.1.1.3 **"Buyer's Card users"** shall mean those natural persons nominated by the Buyer as card holders authorised to use a Buyer's Card and accepted by CTM;

1.1.1.4 **"Protected Cash Facility Agreement"** shall mean the Application form that the Buyer signs when he / it applies for the Protected Cash Facility, and if thereafter accepted by CTM;

1.1.1.5 **"the Agreement"** shall mean the Protected Cash Facility Agreement;

1.1.1.6 **"the Buyer's PC account"** shall mean an account generated for the Buyer in CTM's records, and which will record the total sum of money held by CTM on the Buyer's behalf;

1.1.1.7 **"CTM"** shall mean Cape Town Market (Pty) Ltd, a private company with limited liability duly registered as such under registration number 2002/011913/07, with head office at 110 Gunners Circle, Epping Industrial, Epping, Western Cape, telephone number 021 531 2191;

1.1.1.8 **"the Market"** shall mean the fresh and other produce market operated by CTM from the premises under the name "Cape Town Market";

1.1.1.9 **"the Market agents"** shall mean the persons CTM authorises from time to time to be appointed by suppliers as agents of such suppliers entitled to sell fresh and other produce to Buyers through the Market;

1.1.1.10 **"the Parties"** shall mean the parties to the Protected Cash Facility Agreement, being CTM and the Buyer;

- 1.1.1.11 **“the premises”** shall mean the property generally known as the Cape Town Market situated at 110 Gunner’s Circle, Epping Industrial, and shall include (but shall not be limited to) all of the office and administrative buildings, the parking areas, the assessment centre, the cold room facilities, the trading floor, the loading zones, the premises leased to tenants, The Peoples Market and the payment points, whether operated by CTM and/or the market agents and/or operators and/or tenants;
- 1.1.1.12 **“the Protected Cash Facility”** shall mean the cash card facility made available by CTM to the Buyer in terms of the Agreement, aimed at reducing the risks of cash transactions between buyers and the Market agents at the Market, and which is not a credit facility;
- 1.1.1.13 **“Trading day”** shall mean any day on which the Market is open for business to buyers of fresh produce;
- 1.1.1.14 **“VAT”** means value-added tax, levied in terms of the Value-added Tax Act, 89 of 1991;
- 1.1.2 words referring to one gender shall include a reference to the others;
- 1.1.3 words in the singular shall include the plural, and *vice versa*;
- 1.1.4 words referring to persons shall include a reference to natural and legal persons;
- 1.2 The headings to the clauses in these full Terms and Conditions are for the purpose of convenience and reference only and shall not be used in the interpretation nor modify nor amplify any clause of these Terms and Conditions.
- 1.3 If any provision in a definition is a substantive provision imposing rights or obligations on any party, then notwithstanding that it is only the definition clause, effect shall be given to it as if it were a substantive provision in these full Terms and Conditions.
- 1.4 When any number of days is prescribed in these full Terms and Conditions, same shall be reckoned exclusively of the first and inclusively of the last day, unless the last day falls on a Sunday or public holiday, in which case the last day shall be the next succeeding day which is not a Sunday or public holiday. [For the sake of clarity: 7 days from a Monday shall be the next Monday (and if such Monday is a public holiday, then the Tuesday)];
- 1.5 Where figures are referred to in numerals and in words, and there be a conflict between the two, then the words shall prevail;

2. Suspensive conditions

- 2.1 Notwithstanding anything to the contrary, CTM shall not be required to make the Protected Cash Facility available to the Buyer unless and until the following conditions have been fulfilled:
 - 2.1.1 the Buyer signs the requisite application with CTM for the issuing of at least one Buyer’s Card, and at least one such card has been issued to one of the Buyer’s Card user(s); and
 - 2.1.2 The Buyer signs the Protected Cash Facility Agreement.

3. Commencement and termination dates of the Agreement

- 3.1 These terms and conditions shall become effective with the signature by the last signing party to the Protected Cash Facility Agreement.

- 3.2 The duration of the Agreement is not subject to the Buyer holding any money in the Buyer's PC account.
- 3.3 The Agreement shall terminate in the event of any of the following:
 - 3.3.1 If the Buyer has no credit in the Buyer's PC account for a continued period of 12 months;
 - 3.3.2 Upon CTM (without CTM having to furnish any reason) giving the Buyer 5 days written notice of termination; or
 - 3.3.3 Upon the Buyer (without the Buyer having to furnish any reason) giving CTM 5 days written notice of termination.
- 3.4 Upon termination in terms of clauses 3.3.2 or 3.3.3, then any funds standing to the credit of the Buyer on the Buyer's PC account shall be refunded to the Buyer two Trading days after termination and in accordance with the provisions of clauses 9.11 to 9.15 below.

4. The Buyer's Card

- 4.1 Upon the successful completion by the Buyer of a written application for a Buyer's Card, CTM shall, if it accepts the application, issue a Buyer's Card to the Buyer (as represented by its Buyer's Card User(s), and provided that the Buyer's Card User has first bound himself to the terms of use of the Buyer's Card to the satisfaction of CTM).
- 4.2 The use of the Buyer's Card at the Market shall be subject to the terms and conditions as stipulated on the said written application.
- 4.3 CTM shall be entitled (without having to give reasons) to refuse to issue a Buyer's Card to any particular proposed Buyer's Card User.
- 4.4 The Buyer's Card shall be used for identification of the Buyer's Card User(s) at the Market (including any of its entrances), for buying goods and/or produce at the Market, and for utilizing the Protected Cash Facility in terms of the Agreement.
- 4.5 The Buyer shall be liable for any transactions concluded in his name through use of any of his Buyer's Cards (including requesting refunds in terms of the Agreement) and to that end hereby warrants that any Buyer's Card User's use of any such card is duly authorized.
- 4.6 It is the Buyer's responsibility to retain the Buyer's card safe for the period that he/she is doing business at the Market.
- 4.7 If the Buyer (or any of his Buyer's Card Users) intentionally damages, alters or mutilates a Buyer's Card (including but not limited to punching holes in the card, applying stickers, etc) or uses the Buyer's Card of another card holder, or allows his Buyer's Card to be used by another holder, or makes a copy or copies of the Buyer's Card, he/she shall have materially breached the terms of the Agreement, which breach will entitle (but not oblige) CTM to cancel not only the Buyer's use of the Buyer's Card, but also the Agreement.
- 4.8 A personal identification number ("pin") will be assigned to each Buyer's card in order to protect the Buyer's Card User from any unauthorized use thereof. It shall be the Buyer's responsibility to ensure that this pin is not written down, stored with the card or given to any other person than himself.
- 4.9 The Buyer shall be liable for all purchases made with the use of the Buyer's card (including any Buyer's card issued to any of the Buyer's Card Users).
- 4.10 The Buyer hereby indemnifies CTM against any loss or damage they may incur in respect of any purchases made, whether fraudulently, without proper authorization or otherwise.

- 4.11 The Buyer must report a lost, stolen or damaged card to CTM immediately. The Buyer must complete a lost/stolen property report. Until such time as the Buyer completes the abovementioned form, the Buyer shall be held responsible for any unauthorized use thereof.
- 4.12 CTM shall issue the initial/first Buyer's card free of charge. CTM shall charge the replacement cost should the need for the issuing of an additional card arise due to a card being lost, mutilated or stolen.
- 4.13 CTM reserves the right to suspend a Buyer's Card in the event of non-payment of any monies being owed by the Buyer to CTM and/or a Market Agent.
- 4.14 CTM reserves the right to decline, withdraw or cancel a Buyers Card application at any time without prior notice.
- 4.15 CTM, or any agent thereof acting in the performance of his duties, may confiscate a Buyer's Card if the card is in the possession of a person other than the person to whom the card was issued and that person attempts to use the card by misrepresenting himself as the Buyer.
- 4.16 CTM shall not be held responsible for any damages or loss resulting from technical or mechanical faults or errors in the Buyer's Card system.
- 4.17 In the event of the loss or theft of any Buyer's Card, the Buyer shall not be liable to CTM for any use of the Buyer's Card after the time that the Buyer has completed the report referred to above, unless:
 - 4.17.1 the Buyer's signature appears on a voucher, sales slip, or similar record evidencing that particular use of the Buyer's Card and/or Protected Cash Facility; or
 - 4.17.2 CTM has other evidence sufficient to establish that the Buyer authorized (or was responsible for) that particular use of the Buyer's Card and/or Protected Cash Facility.

5. The Market Agents

- 5.1 The Protected Cash Facility shall only be used for the purchase by the Buyer of produce through the Market agents acting on behalf of the suppliers, and shall not be used for any other purpose and without limitation, the Protected Cash Facility shall not be used for the purchase of any produce through or from any other person.
- 5.2 Any attempt by the Buyer to use the Protected Cash Facility for the purchase of produce from any person other than a Market agent shall constitute a material breach of the Agreement.

6. The Fresh Produce and other Goods for Sale at the Market

- 6.1 The Agreement enables the Buyer to buy fresh produce and other goods at the Market;
- 6.2 Notwithstanding that CTM makes facilities available and operates the Market, the supplier shall be solely responsible for any produce sold at the Market in terms of any purchase agreement and CTM:
 - 6.2.1 shall under no circumstances be responsible for the quality of any produce or goods purchased by the Buyer at the Market;
 - 6.2.2 shall under no circumstances be responsible for the storage of any produce or the end delivery of any produce purchased by the Buyer at the Market;

- 6.2.3 shall under no circumstances be responsible for any loss or damage to the fresh produce or goods purchased by the Buyer, whether or not the Buyer conducted the purchases utilizing the Protected Cash Facility.
- 6.3 CTM gives no warranty (whether express, tacit or implied) in respect of any produce or in respect of any of the goods bought by the Buyer whilst utilizing the Protected Cash Facility.

7. The premises

Entry to the premises, and the use of any of the Market's facilities, shall be at the sole risk of the Buyer and his Buyer's Card User(s). CTM has reserved its right of admission and may therefore, at any stage, demand that any person (whether it be the Buyer, his Buyer's Card User(s) or any other person associated with the Buyer) who refuses to adhere to any lawful instruction issued by CTM, remove himself from the premises.

8. The Buyer's PC account

- 8.1 CTM shall, as soon as possible after conclusion of the Agreement, generate in its records an account for the Buyer (the Buyer's PC account).
- 8.2 The Buyer's PC account will reflect the amount of money held by CTM for and behalf of the Buyer, taking all purchases made by the Buyer with the Buyer's card into account.
- 8.3 Notwithstanding the use of and/or withdrawal of all of the Buyer's money from CTM, the Buyer's PC account will remain active in CTM records, until the Agreement has expired or it has been terminated.
- 8.4 CTM shall not be obliged to activate the Buyer's PC account until the Buyer has duly, to the satisfaction of CTM, completed the Protected Cash Facility application form, and the Buyer has supplied all information required by CTM.
- 8.5 If, during the term of the Agreement and/or at termination thereof, there is money standing to the credit of the Buyer on his Buyer's PC account, and the Buyer is indebted to CTM for whatsoever reason, then CTM shall be entitled to apply so much of the money to the Buyer's credit as may be equal to the amount due to CTM, to settle the Buyer's indebtedness to CTM.

9. The Protected Cash Facility

- 9.1 The Protected Cash Facility allows the Buyer to pay for fresh produce and other goods purchased from the Market agents by utilising the money held by CTM on his behalf, and standing to his credit in the Buyer's PC account.
- 9.2 To make use of the Protected Cash Facility, the Buyer must pay to CTM a cash amount.
- 9.3 There is no minimum amount of cash that the Buyer may pay to CTM.
- 9.4 All payments by the Buyer to CTM, for deposit into CTM's trust account, shall be paid at the designated payment points, and may be paid between 05h00 to 10h00 on Mondays to Fridays, and between 05h00 and 08h00 on Saturdays (provided the Market is open for business on such days).
- 9.5 The Buyer may make as many payments to CTM to stand to his credit on the Buyer's PC account as the Buyer may wish to make.
- 9.6 Having a credit on the Buyer's PC account will enable the Buyer to pay for fresh produce or other goods at the Market in the following manner:

- 9.6.1 The value of the fresh produce or other goods purchased from the Market agents may never exceed the credit balance on the Buyer's PC account;
- 9.6.2 When making payment, the Buyer shall present his Buyer's card at any of the designated pay points;
- 9.6.3 Provided the Buyer has sufficient funds to his credit on the Buyer's PC account, CTM shall pay, from the funds held by it on the Buyer's behalf, and acting on behalf of the Buyer, the Market agent(s) from whom the Buyer purchased the fresh produce and/or other goods.
- 9.7 Any surplus of funds held by CTM on the Buyer's behalf shall remain to the credit of the Buyer on the Buyer's PC account.
- 9.8 The Buyer shall not earn or otherwise be entitled to any interest on his credit balance.
- 9.9 The Buyer is entitled to withdraw the credit balance on the Buyer's PC account by presenting his Buyer's card at any of the designated pay points, and requesting a withdrawal in the manner stipulated below.
- 9.10 Withdrawal instructions may only be given between 06h00 to 10h00 on Mondays to Fridays, and between 06h00 and 08h00 on Saturdays (provided the Market is open for business on such days).
- 9.11 On receiving a withdrawal instruction, CTM shall endeavour to refund so much of the requested refund immediately, and always subject to the availability of cash at the pay points. In all events CTM shall refund the requested withdrawal within two Trading days following receipt of the Buyer's withdrawal instruction.
- 9.12 All withdrawal instructions for the refund of amounts exceeding R10 000,00, shall, at the option of CTM, be executed either in cash or by an electronic funds transfer into such account as the Buyer may nominate in writing.
- 9.13 The moment the cash is refunded to the Buyer, or the funds have been electronically transferred to the Buyer's nominated account, all risk of loss or damage to such cash or funds shall rest with the Buyer, notwithstanding that the Buyer may still be present at the Market or on the premises.
- 9.14 Subject to clause 9.15 below, CTM shall only refund a Buyer in cash if the said Buyer is present in person and in possession of his Buyer's Card (and after having entered his pin).
- 9.15 A Buyer may nominate a third party to receive a refund on his behalf, provided the Buyer has notified CTM of his request in writing. Such third party must himself/herself be in possession of a valid Buyer's card.
- 9.16 Refunds exceeding R5000.00 shall require the authorisation of a CTM supervisor, whilst refunds exceeding R10 000.00 shall require the authorisation of CTM management

10. Statements of the Buyer's PC account

- 10.1 Credit balances of the Buyer's PC account will be made available to the Buyer at the pay points, on the Buyer's request.
- 10.2 Statements of the Buyer's PC account will be made available to the Buyer, on his/her request, at CTM's finance department.

11. Breach

If any party breaches any material provision or term of the Agreement and fails to remedy such breach within 7 (seven) days of the date of receipt of a written notice requiring him to do so, then the aggrieved party shall be entitled without notice, in

addition to any other remedy available to him at law or under the Agreement, including the right to obtain an interdict, to cancel the Agreement or to claim specific performance of any obligation, in either event without prejudice to the aggrieved partner's rights to claim damages.

12. Warranties

The Buyer hereby confirms and warrants that:

- 12.1 all information provided in connection with the application for the Protected Cash Facility and finalization of the Agreement is comprehensive, true and accurate and no relevant information has been excluded.
- 12.2 The Agreement is in an official language that the Buyer reads or understands;
- 12.3 CTM has offered the Buyer an election, from at least two official languages, with regards to the language to be used in all further documents in relation to the Agreement, and that it hereby chooses English as its preferred official language for such purposes;
- 12.4 the terms of the Agreement and all information disclosed herein are in comprehensive, clear, concise and plain language, and have been fully understood by the Buyer.

13. Dispute Resolution and Jurisdiction

- 13.1 Any dispute that may arise from the Agreement and/or the breach thereof shall afford the parties the right to approach the Magistrate's Court for the adjudication thereof, notwithstanding the fact that the value of such dispute may exceed jurisdiction of the Magistrates' Courts.
- 13.2 Should both parties agree the dispute may be referred to arbitration.

14. Legal costs

- 14.1 Should it at any stage become necessary for CTM to institute action against the Buyer by reason of the Agreement and/or a breach thereof, then the Buyer shall be liable to pay all the costs so incurred by CTM on the scale as between attorney and client;
- 14.2 The Buyer shall in addition to the costs referred to above be liable for all legal costs and related expenses pertaining to and associated with the preparation and registration of any of the securities provided for in the Agreement.

15. Indemnity

The Buyer agrees that CTM and/or any operator and/or Market agent and/or tenant leasing space on the CTM premises (including any of their employees and/or agents and/or contractors) shall not be liable for any loss, injury or damages the Buyer (including any of his/their employees and/or agents and/or contractors) may suffer by reason of his/their presence at the CTM, howsoever such loss, injury or damages have been caused or may have risen, and whether it was caused or arose innocently or negligently. The Buyer hereby indemnifies CTM against any claim for such loss, injury or damages.

16. Domicilium and notices

- 16.1 The parties choose as their *domicilia citandi et executandi* for all purposes under the Agreement, whether in respect of court process, notices or other documents or communications of whatsoever nature, the addresses as set out on page 1 hereof (in respect of the Buyer) , and in clause 1 above (in respect of CTM);
- 16.2 Any notice or communication required or permitted to be given in terms of the Agreement shall be valid and effective only in writing but it shall be competent to give notice by fax;
- 16.3 Any party may by notice to any other party change the physical addresses chosen as her *domicilium citandi et executandi vis-a-vis* that party to another physical address in Cape Town, provided that the change shall become effective vis-a-vis that addressee on the 4th business day from the deemed receipt of the notice by the addressee;
- 16.4 Any notice to a party sent by registered mail to its *domicilium citandi et executandi* shall be deemed to have been received on the 4th business day after posting (unless the contrary is proved). Any notice delivered by hand to a party during ordinary business hours at its *domicilium citandi et executandi* shall be deemed to have been received on the day of delivery. Any notice sent by fax to its chosen fax number shall be deemed to have been received on the date of despatch (unless the contrary is proved);
- 16.5 Notwithstanding anything to the contrary herein contained, a written communication actually received by a party shall be adequate written notice or communication to it notwithstanding that it was not sent to or delivered at its chosen *domicilium citandi et executandi*.

17. General

- 17.1 The Buyer may not cede, assign or transfer any of its rights and obligations set out herein to any other person, unless CTM has agreed to such cession, assignment or transfer in writing.
- 17.2 No amendment or variation of, addition to or cancellation by consent or novation of the Agreement shall be of any force and effect unless reduced to writing and signed by both parties hereto.
- 17.3 It is recorded that certain of the fees payable by the Buyer to CTM in terms of the Agreement may be subject to VAT. All such rates and amounts expressed in the Agreement have been expressed exclusive of any VAT.