

SUPPLY AGREEMENT

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1. INTERPRETATION

- 1.1 The headnotes to the clauses of this Agreement are inserted for reference purposes only and shall in no way govern or affect the interpretation hereof.
- 1.2 Unless inconsistent with the context, the expressions set forth below shall bear the following meanings:-
- “this Agreement” means this supply agreement, the Schedule and any attachments hereto;
- “Goods” means collectively or individually as the context may require, the goods that may from time to time be supplied from PCK to the Purchaser in terms of this Agreement;
- “Month” means each month of the year, eg January, February;
- “PCK” means the Party in clause 1.1 of the Schedule;
- “Prime Rate” means the publicly quoted prime lending rate of interest of the principal bankers of PCK from time to time, nominal annual compounded monthly in arrear based on a 365 day/year factor, irrespective of whether the year is a leap year as certified by any manager of the bank whose designation need not be proven;
- “the Purchaser” means the Party in clause 1.2 of the Schedule;
- “the Warehouse” means the warehouse of PCK, at 24 Steele Street Steeledale Alberton;
- “the Schedule” means the schedule proximal to this supply agreement;
- “Signature Date” means the date of the signature of the Party last signing this Agreement; and
- “the Sureties” means the sureties in clause 3 of the Schedule.
- 1.3 If any provision in a definition is a substantive provision conferring rights or imposing obligations on any party, notwithstanding that it is only in the definition clause, effect shall be given to it as if it were a substantive provision of this Agreement.
- 1.4 Unless inconsistent with the context, an expression which denotes:-
- 1.4.1 any gender includes the other genders;
- 1.4.2 a natural person includes an artificial person and vice versa;
- 1.4.3 the singular includes the plural and vice versa.
- 1.5 The Schedule and attachments to this Agreement form an integral part hereof and words and expressions defined in this Agreement shall bear, unless the context otherwise requires, the same meaning in such Schedule and attachments.

2. INTRODUCTION

- 2.1 PCK Distributors Johannesburg (PTY) LTD Registration Number 2013/200681/07, that carries on business in the hospitality industry, more specifically the large scale production of foodstuffs for the Piatto Franchise.
- 2.2 PCK wishes to extend the supply of the Goods to entities outside the Franchise and Piatto Group.
- 2.3 The Purchaser wishes to appoint PCK to supply it with the Goods and PCK wishes to accept such appointment.
- 2.4 Accordingly the parties enter into this Agreement.

3. SUPPLY AND SALE

- 3.1 The Purchaser appoints PCK to supply it with the Goods on the terms and in accordance with the provisions of this Agreement. PCK accepts the appointment.
- 3.2 PCK shall sell and deliver the Goods to the Purchaser and the Purchaser shall purchase and take delivery of and pay for the Goods in accordance with the terms of this Agreement.

4. CONDITIONS PRECEDENT

- 4.1 This entire Agreement, excluding clauses 1, 2, 4 and 13 to 16 (inclusive of both), which shall be of immediate force and effect, is subject to the fulfilment of the following conditions precedent within 10 (ten) business days of the Signature Date or such later date as is agreed in writing by the parties:
- 4.1.1 PCK approves the creditworthiness of the Purchaser;
- 4.1.2 the Sureties complete and sign a suretyship in the form of that annexed hereto marked “A”; and
- 4.1.3 the Purchaser provides a bank or cash guarantee in the amount of R50 000 (Fifty Thousand Rand) for payment of amounts that may become owing to PCK in terms of this Agreement, which guarantee shall be annexed hereto marked “B” on the signing thereof.
- 4.2 The Purchaser irrevocably undertakes to use its best endeavours to fulfil or procure the fulfilment of all of the conditions precedent referred to in clause 4.1 by due date.
- 4.3 It is recorded that the conditions precedent specified in clause 4.1 have been included in this Agreement for the sole benefit of PCK, which shall have the right to unilaterally waive any of the conditions prior to the date by which they are to be fulfilled, or to extend the date for the fulfilment thereof in writing, at its sole and absolute discretion.
- 4.4 If any condition precedent is not fulfilled or waived on or prior to the date or extended date stipulated for such fulfilment, the provisions of this Agreement, other than those stipulated in clause 4.1 above, shall never become effective, and neither Party shall have any claim against the other Party as a result of or in connection with any such non-fulfilment or non-waiver (other than a claim for a breach by the Purchaser of its obligations under clause 4.2).

5. DURATION

This Agreement shall commence on the Signature Date and shall continue indefinitely until terminated by either Party giving to the other not less than 2 (two) months prior written notice to that effect, or otherwise in terms of this Agreement.

6. EXCLUSIVITY OF THE APPOINTMENT

The appointment of PCK in terms of this Agreement is exclusive. Accordingly, neither the Purchaser nor any company or business entity in which it has an interest, whether directly or indirectly, shall, during the term of this Agreement, purchase, or procure the supply and/or sale to it of the Goods or any other similar goods anywhere in South Africa, other than by or through PCK.

7. CONTENT AND QUALITY OF THE GOODS

- 7.1 The Goods available shall be made known to the Purchaser by PCK from time to time.
- 7.2 PCK shall be entitled to supply the Goods bearing such trade name as it may decide.
- 7.3 PCK shall ensure that the content of the Goods delivered in terms of this Agreement shall be of good and merchantable quality, standard and condition.
- 7.4 Any Goods supplied to the Purchaser, which the Purchaser considers, do not comply with the provisions of clause 7.3 (“*Allegedly Defective Goods*”) shall be notified in writing by the Purchaser to PCK within 2 business days after delivery of the Goods. If no notification is received, all Goods delivered shall be deemed to be in accordance with the provisions of clause 7.3.
- 7.5 PCK and the Purchaser shall each appoint a representative who shall be responsible for inspecting Allegedly Defective Goods and endeavouring to reach agreement as to whether or not PCK agrees that they are defective. If the representatives agree they are defective, then the Goods will be dealt with in accordance with the provisions of clause 7.8.
- 7.6 If the PCK representative does not agree that the Goods are defective Goods, PCK will be entitled to refer the matter for determination by an independent expert, agreed between the parties within 3 (three) days, and failing agreement, appointed by PCK. The independent expert shall:
- 7.6.1 act as an expert and not as an arbitrator;
- 7.6.2 be entitled to take advice and obtain information or views from any person or party that he considers desirable.
- 7.7 The expert’s decision shall be final and binding on the parties and his costs shall be borne by the party against whom he makes a decision.
- 7.8 All defective Goods shall be returned to, or collected by PCK and disposed of as PCK deems fit.

8. ORDERS AND FULFILMENT OF SUPPLY

- 8.1 The first order of the Goods shall take place within 1 (one) week of the Signature Date.
- 8.2 The Purchaser shall on a weekly basis place written orders with PCK. Each order include at least:
- 8.2.1 the type of Goods;
- 8.2.2 the quantity of each type of the Goods for delivery on a weekly basis; and
- 8.2.3 such other detail as PCK may reasonably require.

- 8.3 In addition, and so as to enable PCK to plan its supply of the Goods, on the fifth day of each month during the term of this Agreement, the Purchaser shall provide PCK with a written rolling 3 (three) month forecast setting out, in respect of the 3 months commencing on the first day of the month following that in which the forecast is given:
- 8.3.1 its anticipated requirements of the Goods during the 3 (three) Month period, broken down into monthly requirements; and
- 8.3.2 such other detail as PCK reasonably requires.
- 8.4 The Purchaser acknowledges that PCK will take the 3 month rolling forecast into account with regard to its planning of the supply of the Goods, but shall only be obliged to deliver against firm written orders by the Purchaser placed with PCK in terms of clause 8.2, unless otherwise agreed in writing by PCK.
- 8.5 Delivery of all the Goods shall be at the Warehouse.
9. **PRICE AND PAYMENT**
- 9.1 The Goods shall be supplied by PCK to the Purchaser will be at PCK's ruling price from time to time, which will be communicated to the Purchaser in writing on request.
- 9.2 The prices of the Goods shall be adjusted from time to time based on raw material increases, variances in overhead costs of PCK or otherwise. PCK shall notify the Purchaser of price adjustments by giving one month's written notice to the Purchaser.
- 9.3 Unless otherwise indicated, all prices will include Value Added Tax and will be for delivery at the Warehouse.
- 9.4 Payment shall be made via electronic bank transfer into the following bank account:
- PCK Distributors Johannesburg**
Account Number: 1077453655
Bank: Nedbank
Branch Code: 198765
- on or before the last day of the month, following that on which the Goods were delivered.
- 9.5 Payment shall be made without deduction or set-off.
- 9.6 Any amount not paid on due date shall bear interest, accruing monthly in arrears, until paid at the Prime Rate.
10. **DELIVERY, RISK AND OWNERSHIP**
- 10.1 The Purchaser shall be liable, at its own cost and expense, to take delivery of the Goods from PCK at the Warehouse.
- 10.2 On written request by the Purchaser, PCK shall arrange for delivery to the Purchaser at an address stipulated in the written notice, or such other address as is agreed to between the parties, and all costs of such delivery shall be for the account of the Purchaser. The parties shall use such transporter as PCK may decide.
- 10.3 All risk in and to the Goods shall pass to the Purchaser when the Purchaser takes delivery of the Goods at the Warehouse in accordance with clause 10.1, or where PCK has arranged for delivery of the Goods to the Purchaser in terms of clause 10.2, on delivery to the person responsible for transporting the Goods to the address/es nominated by the Purchaser.
- 10.4 Ownership of the Goods shall pass to the Purchaser upon receipt of full payment by the Purchaser.
11. **FORCE MAJEURE**
- 11.1 If either party ("the affected party") is prevented directly or indirectly from carrying out all or any of its obligations under this Agreement from any cause whatsoever is beyond the reasonable control of such party (including without limiting the generality of the foregoing, any strike, lock-out, labour dispute, war, riot, civil commotion, insurrection, fire, explosion, floods, lack of paper supply, breakdown of machinery, any order or regulation of any Government or other lawful authority or act of God), then the affected party shall be excused from performing such obligation/s until the cause of delaying, hindering or preventing the affected party from fulfilling such obligations no longer does so, provided that if such cause continues to delay, hinder or prevent performance for more than 90 days, the other party may terminate this Agreement by written notice.
- 11.2 The affected party invoking the force majeure shall:
- 11.2.1 give written notice to the other party of the circumstances giving rise to the force majeure as soon as possible after becoming aware of the occurrence or circumstances in question; and
- 11.2.2 use commercially reasonable endeavours to bring the circumstances giving rise to the force majeure to an end as soon as possible, and on termination thereof shall give written notice to the other party of the termination thereof.
12. **LIMITATION OF LIABILITY**
- Notwithstanding anything to the contrary, neither party shall be liable to the other for any direct or consequential losses or damages, including but not being limited to loss of profits provided that a party may not rely on the provision of this clause in respect of a claim for direct damages where such party is or has been guilty of gross negligence or of wilful breach of its obligations in terms of this Agreement.
13. **CONFIDENTIALITY**
- 13.1 The parties undertake that all information which either of them has or obtains at any time relating to the other party, including but not limited to technical and commercial information, which is not in the public domain or available to the general public on request:
- 13.1.1 shall be kept confidential and shall not be disclosed by either party and its sub-contractors, or by their officers, employees and/or agents, to any third party;
- 13.1.2 shall not directly or indirectly be used by either party or its sub-contractors, or by their officers, employees and/or agents for their own benefits or the benefit of any third party.
- 13.2 Each party shall on demand obtain secrecy undertakings in the form specified by the other party from any sub-contractors, officer, employee and/or agent of such party.
- 13.3 The parties agree not to use each other's trade names or any of its intellectual property, including, in particular, any of its brand names or trademarks, in publicity releases or advertising or for other promotional purposes, without the prior written consent of the other party.
- 13.4 The parties agree not to disclose to any third party the existence or provisions of this Agreement without the consent in writing of the other party first being obtained.
- 13.5 The provisions of this clause 13 shall:
- 13.5.1 not prohibit or prevent a party from disclosing information that it is obliged to disclose pursuant to a court order or statutory obligation to do so;
- 13.5.2 survive the termination of this Agreement for any reason, and shall remain binding on the parties in perpetuity.
14. **BREACH**
- If either party should breach any term of this Agreement and remain in breach notwithstanding having been given 14 (fourteen) days written notice to remedy such breach, the other party shall be entitled, without prejudice to whatever rights it may have in law (but subject to clause 12):
- 14.1 to cancel this Agreement and claim damages;
- 14.2 to claim specific performance of the terms of this Agreement.
15. **DOMICILIUM**
- 15.1 The parties hereto choose the addresses set out in clause 4 of the Schedule as those at which they will receive all notices and legal process given or served in terms of this Agreement (i.e their domicilia citandi et executandi):
- 15.2 Either party hereto shall be entitled to change its domicilium from time to time, provided that any new domicilium selected by it shall include an address other than a box number in the Republic of South Africa, and any such change shall only be effective upon receipt of notice in writing by the other parties of such change.
- 15.3 All notices, demands, communications or payments intended for either party shall be made or given at such party's domicilium for the time being.
- 15.4 A notice sent by one party to another party shall be deemed to be received:-
- 15.4.1 on the same day, if delivered by hand;
- 15.4.2 on the same day of transmission if sent by telefax with receipt received confirming completion of transmission, provided that if the day on which it is sent is not a business day, then on the on the first business day after transmission with receipt received confirming completion of transmission;
- 15.4.3 on the 10th (TENTH) day after posting, if sent by prepaid registered mail.
- 15.5 Notwithstanding anything to the contrary herein contained a written notice or communication actually received by a party shall be an adequate written notice or communication to it notwithstanding that it was not sent to or delivered at its chosen domicilium citandi et executandi.

16. **GENERAL**

- 16.1 This Agreement contains all of the express provisions agreed on by the parties with regard to the subject matter hereof and the parties waive the right to rely on any alleged express provision not contained herein.
- 16.2 No party may rely on any representation which allegedly induced that party to enter into this Agreement, unless the representation is recorded herein.
- 16.3 No agreement varying, adding to, deleting from or cancelling this Agreement and no waiver of any right under this Agreement shall be effective unless reduced to writing and signed by or on behalf of the parties.
- 16.4 No relaxation by a party of any of its rights in terms of this Agreement at any time shall prejudice or be a waiver of its rights (unless it is a written waiver) and it shall be entitled to exercise its rights thereafter as if such relaxation had not taken place.
- 16.5 This Agreement shall be interpreted and implemented in accordance with the law of the Republic of South Africa.
- 16.6 Each party shall bear its own costs of and incidental to the negotiation, preparation and signature of this Agreement.

SCHEDULE

1. THE PARTIES

1.1 PCK Distributors Johannesburg (Pty) Ltd; and

1.2 Register Name: _____ Trading As: _____

Registration No. _____ (“the Purchaser”).

2. CREDIT APPLICATION

2.1 Please mark the relevant legal entity with (x) –

- Public Company Private Company Partnership
 Sole Proprietor Close Corporation Other

2.2 Postal Address: _____ Street Address: _____

2.3 Telephone No: _____; Cell phone No: _____

Email Address: _____;

Accounts Person: _____ Contact Number: _____

2.4 Name of person designated to sign on behalf of company _____;

2.5 Position held in Company _____;

2.6 Name/s of Member /s:

_____;

2.7 Bankers: _____;
Branch Name: _____; Branch Code: _____;
Account No: _____;

2.8 VAT No: _____;

2.9 Maximum credit required per month: R _____;

Terms: _____ (At PCK Distributors Johannesburg)

2.10 Trade references (Names and telephone numbers of three active or current trade references):

<u>Company</u>	<u>Address</u>	<u>Telephone Number</u>
1)		
2)		
3)		

2.11 In the event of a sole proprietor/partnership please supply the following information:

Full names of the members

_____;	_____;
_____;	_____;
_____;	_____;

Home address(es)

_____;	_____;
_____;	_____;
_____;	_____;

I.D. Number(s)

_____;	_____;
_____;	_____;

3 THE SURETIES

3.1 Name(s)

_____;	_____;
_____;	_____;

3.2 Physical Address(s)

_____;	_____;
_____;	_____;
_____;	_____;

4 NOTICE AND DOMICILIUM ADDRESSES

4.1 **PCK:** 24 Steele Street
Steeledale
Alberton
011 613 4486

Fax:

Accounts: 086 640 4867
Orders: 011 613 1933

Email:

Accounts: nelie@pckd.co.za or bridget@mrsauce.co.za

Orders: orders@pckd.co.za

4.2 **The Purchaser** _____

Fax: _____

5 AGREEMENT

The Parties enter into this Agreement on the terms and subject to the conditions contained in this Schedule and the Supply Agreement (5 Pages) annexed hereto.

6 SIGNATURE CLAUSE

Signed for and on behalf of the Purchaser: “who warrants that he /she is duly authorized hereto”.

.....
SIGNATURE

.....
DATE

.....
NAME (PRINTED)

.....
DESIGNATION

Signed for and on behalf of PCK Distributors Johannesburg

.....
SIGNATURE

.....
DATE

.....
NAME (PRINTED)

DEED OF SURETYSHIP

I/We, the undersigned,
Full Names: _____

Identity Number: _____

Address:
and
Full Names: _____

Identity Number: _____

Address: _____

(“the Surety/ies”)

do hereby bind myself/ourselves jointly and severally as surety/ies and co-principal Debtor/s in solidum in favour of

PCK DISTRIBUTORS JOHANNESBURG (PTY) LTD

(hereinafter referred to as (“the Creditor”) for the due payment on demand by

(hereinafter referred to as (“the Debtor”)

of all or any sums of money in respect of which the Debtor is indebted or at any time hereafter may become indebted to the Creditor(s) or its/their successors in title or assigns from whatsoever cause arising, whether such indebtedness be incurred by the Debtor solely or jointly or in partnership with any other persons, companies, and/or close corporations.

1. It is agreed and declared that all admissions and acknowledgements of indebtedness by the Debtor shall be binding on me/us; that the Creditor(s) shall be at liberty, without affecting its/their rights hereunder, to release securities and to give time to or compound or make any other arrangements with the Debtor or other persons, companies and/or close corporations aforesaid without reference to or approval of me/us, and that in the event of liquidation, judicial management, insolvency or compromise, no such liquidation, judicial management, insolvency or compromise and no dividend/s or payment/s which the Creditor(s) may receive from the Debtor, or any other persons, companies, and/or close corporations or from me/us shall prejudice the rights of the Creditor(s) to recover from me/us to the full extent of this suretyship any sum which after the receipt of such dividend/s or payment/s may remain owing by the Debtor.
2. In the event of any liquidation or judicial management of the Debtor I/we bind myself/ourselves not to file any claim against the Debtor in competition with the Creditor(s). Further, in the event of any composition or compromise by the Debtor, whether in terms of the company law or insolvency law, or under common law, I/we also undertake not to file any claim against the Debtor in competition with the Creditor(s).
3. And I/we hereby renounce the benefit of the legal exceptions "ordinis seu excussionis et divisionis", "non cause debiti" and "revision of accounts", with the force and effect of which I/we acknowledge myself/ourselves to be fully acquainted and I/we agree and declare that this suretyship is to be in addition and without prejudice to any other suretyship/s and security/ies now or hereafter to be held by the Creditor(s) and that it shall remain in force as a continuing security notwithstanding any intermediate settlement of account and notwithstanding my/our death or legal disability.
4. And I/we hereby agree that notwithstanding any part payment by me/us or on my/our behalf, I/we shall have no right to any cession of action in respect of such part payment and shall not be entitled to take any action against the Debtor or against any other surety for the Debtor in respect thereof unless and until the indebtedness of the Debtor to the Creditor(s) shall have been discharged in full.
5. For the purposes of any action against me/us hereunder, for provisional sentence or otherwise, a certificate by the Creditor(s) as to the amount owing by the Debtor and to the effect that the due date of payment of such amount has arrived shall be deemed to be sufficient and satisfactory proof of the facts therein stated.
6. And I/we choose domicilium citandi et executandi for all purposes herein at the above address/es set out against my/our name/e, and all notices required to be given to me/us in terms hereof shall be considered duly given if posted to me/us to the said address/es.
7. As collateral security for the discharge of the obligations assumed by me/us in terms hereof, I/we hereby cede and/or pledge to the Creditor(s) all my/our right, title and interest in and to any and all claims, shares, members interest, debentures and loan accounts which I/we now have or may in future have against and in the Debtor from any cause of indebtedness whatsoever or any reason whatsoever, hereby undertaking on demand by the Creditor(s) or its/their nominee to deliver to the Creditor(s) or its/their nominee all documents (duly endorsed where appropriate) evidencing or embodying or relating to any such claims, shares, debentures and/or loan accounts. I/we further agree that if prior to the signature by me/us of this deed of suretyship I/we have ceded and/or pledged unto and in favour of any other persons, companies and/or close corporations my/our right, title and interest in and to any of the aforesaid claims, shares, debentures and/or loan accounts this cession shall be deemed to be a cession of all my/our reversionary rights and in and to any such claims aforesaid after payment of all amounts secured by the prior cession/s or after the prior cessionary/ies for any reason or in any manner shall have lost, abandoned or relinquished any rights thereunder. Notwithstanding the aforesaid I/we warrant that I/we have not ceded or pledged the aforesaid claims, shares, members interest, debentures and/or loan accounts to any party in any manner whatsoever.
8. In respect of all contracts entered and to be entered into by the Debtor with the Creditor(s) I/we warrant that each such contract is or will be at the time of the execution or formation thereof within the scope, authority, powers and objects of the Debtor and that all resolutions of and signatures by directors or members of the Debtor were or, in the case of future contracts, will be properly and with due authority passed and/or executed and/or made. If there shall in respect of any such contract be any breach of the terms of this warranty, then I/we hereby assume the liability to the Creditor(s) which any such contract purported to impose upon the Debtor.
9. And I/we do hereby waive presentment, notice of dishonour and protest of any promissory note, bill of exchange, cheque or other negotiable instrument made, drawn, accepted, endorsed or discounted by the Debtor or to be so made, drawn, accepted, endorsed or discounted, hereby agreeing and admitting



that my/our liability hereunder in respect of any such instrument shall not be in any way affected by any failure to present or to give notice of dishonour or to protest as aforesaid.

- 10. Although this deed has been prepared in form for signature by more than one surety, each of us who signs it acknowledges and records that notwithstanding the fact that it provides for signature hereof by other sureties, there is a separate, distinct and independent contract of suretyship brought into existence by each surety who does sign it. Accordingly if for any reason any surety named herein shall fail to sign this deed of suretyship for any reason whatsoever or if this suretyship shall for any reason cease to be or is not binding on any one or more of the sureties then the obligations of the other/s shall be and continue to be binding and remain of full force and effect in terms hereof.
- 11. I/we will be responsible for all costs, charges and expenses of whatsoever nature which may be incurred by the Creditor(s) in enforcing its/their rights in terms hereof including, without limitation, legal costs on the scale as between attorney and client and collection commission irrespective whether any action has been instituted against me/us or not.
- 12. I/we will be responsible for all costs, charges and expenses of whatsoever nature which may be incurred by the Creditor(s) in enforcing its/their rights in terms hereof including, without limitation, legal costs on the scale as between attorney and client and collection commission irrespective whether any action has been instituted against me/us or not.
- 13. I/we acknowledge that this deed of suretyship was fully completed and had no blank/uncompleted spaces at the time of signature thereof by me/us.

THUS DONE AND SIGNED AT _____ ON THIS THE _____ DAY OF _____ 20____

AS WITNESSES:

_____	_____ Surety	_____ Spouse's Signature (as consent for signature if applicable)
_____	_____ Surety	_____ Spouse's Signature (as consent for signature if applicable)
_____	_____ Surety	_____ Spouse's Signature (as consent for signature if applicable)



ATTACHMENT "B"

BANK GUARANTEE