

**MODEL CONTRACT FOR THE RETAIL SECTOR – SUPPLY OF GOODS**

# **PARTIES**:

## Seller

Name (name of company)

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Legal form (e.g. limited liability company)

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Country of incorporation and (if appropriate) registration number

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Address (address of place of business of the seller, phone, fax, e-mail)

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Represented by (surname and first name, address, position, legal title of representation)

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## Buyer

Name (name of company)

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Legal form (e.g. limited liability company)

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Country of incorporation and (if appropriate) trade register number

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Address (address of place of business of the buyer, phone, fax, e-mail)

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Represented by (surname and first name, address, position, legal title of representation)

**HEREINAFTER:** “the Parties”

# OPERATIVE PROVISIONS

## Goods

### Subject to the terms agreed in this contract, the Seller shall deliver the following goods (hereinafter: “the goods”) to the Buyer.

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### Description of the goods (details necessary to define/specify the goods which are the subject of the contract, including required quality, description, certificates, country of origin, other details).

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### Quantity of the goods (including unit of measurement).

#### Total quantity

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#### Per delivery instalment (if appropriate)

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### Inspection of the goods (where an inspection is required, specify, as appropriate, details of organization responsible for inspecting quality and/or quantity, place and date and/or period of inspection, responsibility for inspection costs).

#### Packaging

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#### Other specification

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**Delivery**

Place of delivery

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### Date or period of delivery

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### Carrier (name and address, where applicable)

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### Other delivery terms (if any)

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### **Price**

### Total price

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### Price per unit of measurement (if appropriate)

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### Amount in numbers

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### Amount in letters

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### Currency

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### Method for determining the price (if appropriate)

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### **Payment conditions**

### Means of payment (e.g. cash, cheque, bank draft, transfer)

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### Details of Seller’s bank account (if appropriate)

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### Time for payment

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### The Parties may choose a payment arrangement among the possibilities set out below, in which case they should specify the arrangement chosen and provide the corresponding details:

### Payment in advance (Specify details)

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##### Payment backed by bank guarantee (Specify details)

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##### Other payment arrangements (Specify details)

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### **Documents**

### The Seller shall make available to the Buyer the following documents (tick as appropriate and include the number of copies to be provided):

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| --- | --- | --- |
| a | Invoice |  |
| b | Delivery note |  |
| c | Consignment note |  |
| d | Goods Received note |  |
| e | Credit/Debit Note |  |
| f | Others |  |

### The following transport documents (specify any detailed requirements).

##### Packing list:

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##### Others:

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### **Non-performance of the Buyer’s obligation to pay the price at the agreed time.**

### If the Buyer fails to pay the price at the agreed time, the Seller may extend to the Buyer an additional period of time of (specify the length) …………………... for performance of payment. If the Buyer fails to pay the price at the expiration of the additional period, the Seller may declare the buyer to be in breach of this contract in accordance with clause 7 of this contract.

### If the Buyer fails to pay the price at the agreed time, the Seller shall in any event be entitled, without limiting any other rights it/they may have under the contract, to charge interest on the outstanding amount from the date agreed at paragraph 3.7.3 at the rate of (Specify %) ………. from the date of default.

## Non-performance of the Seller’s obligation to deliver the goods at the agreed time.

## If the Seller fails to deliver the goods at the agreed time, the Buyer may extend to the Seller an additional period of time of (specify the length ……………) for performance of delivery.

## If the Seller fails to deliver the goods at the expiration of the additional period, the Buyer may declare the Seller to be in breach of the Contract in accordance with clause 7 of this contract.

## If the Seller is in delay of delivery of any goods as provided in this contract, the Buyer is entitled to claim liquidated damages equal to . . . % (parties may agree on some other percentage) of the price of those goods for each complete day of delay as from the agreed date of delivery or the last day of the agreed delivery period, as specified in clause 3.5 of this contract, provided the Buyer notifies the Seller of the delay.

## Where the Buyer so notifies the Seller within ………………. days from the agreed date of delivery or the last day of the agreed delivery period, damages will run from the agreed date of delivery or from the last day of the agreed delivery period.

### **Lack of conformity.**

## The Buyer shall examine the goods, or cause them to be examined within ………………. days, as is practicable in the circumstances. The Buyer shall notify the Seller of any lack of conformity of the goods, specifying the nature of the lack of conformity, within ………. days after the Buyer has discovered or ought to have discovered the lack of conformity.

## Where the Buyer has given due notice of non-conformity to the Seller, the Buyer may at his discretion:

## Require the Seller to deliver any missing quantity of the goods, without any additional expense to the Buyer; or

## Require the Seller to replace the goods with conforming goods, without any additional expense to the Buyer; or

## Require the Seller to repair the goods, without any additional expense to the Buyer; or

## Reduce the price in the same proportion as the value that the goods actually delivered had at the time of the delivery bears to the value that conforming goods would have had at that time.

## The Buyer may not reduce the price if the Seller replaces the goods with conforming goods or repairs the goods in accordance with paragraph 4.2.2 and 4.2.3 or if the Buyer refuses to accept such performance by the Seller, the buyer may;

## Declare this contract breached in accordance with clause 7 of this contract.

## The Buyer shall in any event be entitled to claim damages.

## The Seller’s liability under this clause for lack of conformity of the goods is limited to (specify limitations if any)

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## Transfer of property

## The Seller must deliver to the Buyer the goods specified in Paragraph 3.2 of this contract free from any right or claim of a third person.

## The property in the goods (consignment) shall not pass to the Buyer until the Seller has received payment in full or at a time the parties agree or as implied from conduct of the parties or within a reasonable time.

* 1. The property in goods and risk shall pass to the Buyer for the case of non-consignment goods after the delivery of specific (ascertained) goods notwithstanding paragraph 3.7.3.

## Conduct in Abuse of Buyer Power

* 1. Where the Buyer has buyer power as defined at section 2 of the Competition Act No. 12 of 2010, the following conduct by the Buyer shall amount to abuse of that buyer power and subject to the jurisdiction of the Competition Authority of Kenya -
     1. Delays in payment of a supplier without justifiable reason in breach of agreed terms of payment;
     2. Unilateral termination or threats of termination of the commercial relationship without notice or on an unreasonably short notice period, and without an objectively justifiable reason;
     3. Refusal to receive or return any goods or part thereof without justifiable reason in breach of the agreed contractual terms;
     4. Transfer of costs or risks to the Supplier by imposing a requirement for the Supplier to fund the cost of a promotion of the Suppliers’ goods or services;
     5. Transfer of commercial risks meant to be borne by the Buyer to the Supplier;
     6. Demands for preferential terms unfavorable to the Supplier or demanding limitations on the Supplier to other Buyers;
     7. Reducing prices by a small but significant amount where there is difficulty in substitutability of alternative Buyers or reducing prices below competitive levels; or
     8. Bidding up of inputs by the Buyer with the aim of excluding competitors from the market.

1. **Breach of contract**
   1. There is a breach of contract where a party fails to perform any of its obligations under this contract, including defective, partial or late performance or engages in any of the conducts under clause 6 above.
   2. There is a fundamental breach of contract where:
      1. Strict compliance with the obligation which has not been performed is of the essence under this contract; or
      2. The non-performance substantially deprives the aggrieved party of what it was reasonably entitled to expect under this contract.
      3. The Parties additionally agree that the conduct listed under section 24A(5) of the Competition Act are a fundamental breach of contract.
      4. In a case of a breach of contract according to paragraph 6.1, the aggrieved party shall, by notice to the other party, fix an additional period of time of (*specify the length*) ……………. for performance. During the additional period of time the aggrieved party may or may not withhold performance of its own reciprocal obligations and may claim damages, but may not declare this contract breached. If the other party fails to perform its obligation within the additional period of time, the aggrieved party may declare this contract breached.
      5. In case of a fundamental breach of contract according to paragraph 7.2.3, the aggrieved party may declare this contract avoided without fixing an additional period of time for performance to the other party.
      6. A declaration of breach of this contract is effective only if made by notice to the other party.
2. **Force majeure** 
   1. “Force majeure” means war, emergency, accident, fire, earthquake, flood, storm, industrial strike or other impediment which the affected party proves was beyond its control and that it could not reasonably be expected to have taken the impediment into account at the time of the conclusion of this contract or to have avoided or overcome it or its consequences.
   2. A party affected by force majeure shall not be deemed to be in breach of this contract, or otherwise be liable to the other, by reason of any delay in performance, or the non-performance, of any of its obligations under this contract to the extent that the delay or non-performance is due to any force majeure of which it has notified the other party in accordance with paragraph 8.3. The time for performance of that obligation shall be extended accordingly, subject to the parties’ agreement.
   3. If any force majeure occurs in relation to either party which affects or is likely to affect the performance of any of its obligations under this contract, it shall notify the other party within a reasonable time as to the nature and extent of the circumstances in question and their effect on its ability to perform.
   4. If the performance by either party of any of its obligations under this contract is prevented or delayed by force majeure for a continuous period in excess of three (specify any other figure) months, the other party shall be entitled to terminate this contract by giving written notice to the Party affected by the force majeure.
3. **Entire agreement**
   1. This contract sets out the entire agreement between the Parties. Neither party has entered into this contract in reliance upon any representation, warranty or undertaking of the other party that is not expressly set out or referred to in this contract. This clause shall not exclude any liability for fraudulent misrepresentation.
   2. This contract supersedes any previous agreement or understanding relating its subject matter.
   3. This contract may not be varied except by an agreement of the Parties in writing and signed. (which may include e-mail).
4. **Notices**
   1. Any notice under this contract shall be in writing (which may include e-mail) and may be served by leaving it or sending it to the address of the other party.
5. **Dispute resolution procedure**
   1. Any dispute, controversy or claim arising out of or relating to this contract, including its conclusion, interpretation, performance, breach, termination or invalidity, shall be settled using the mechanism agreed by the parties including Alternative Dispute Resolution (Arbitration, Mediation, Negotiation, Conciliation)
   2. Any dispute, controversy or claim arising out of or relating to this contract, in particular to abuse of Buyer Power under clause 6 shall be settled by the Competition Authority of Kenya which will have jurisdiction.
6. **Applicable law and guiding principles**
   1. Questions relating to this contract that are not settled by the provisions contained in the contract shall be governed by the laws of the Republic of Kenya.
   2. This contract shall be performed in the spirit of good faith and fair dealing.

**DATE AND SIGNATURE OF THE PARTIES**

Seller Buyer

Date …………………………………. …………………………………..

Name …………………………………. …………………………………..

Signature ………………………. Signature ………………………