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# WEB SITE TERMS AND CONDITIONS

THESE TERMS AND CONDITIONS ARE BINDING AND ENFORCEABLE AGAINST ALL PERSONS THAT ACCESS THE BOKOMO FOODS WEB SITE OR ANY PART THEREOF ("THE BOKOMO FOODS WEB SITE") IN TERMS OF SECTION 11(3) OF THE [ELECTRONIC COMMUNICATIONS AND TRANSACTIONS \(ECT\) ACT 25 OF 2002](#).

IF YOU DO NOT AGREE TO THESE TERMS AND CONDITIONS YOU MUST LEAVE THE BOKOMO FOODS WEB SITE IMMEDIATELY, AS FURTHER USE WILL AUTOMATICALLY BIND YOU TO THESE TERMS AND CONDITIONS.

## DEFINITIONS AND INTERPRETATION

- a) "Bokomo Foods " means Bokomo Foods (Pty) Ltd, registration number xxxxxxxxxxxx;
- b) "Bokomo Foods web site" means the Bokomo Foods web site located at [www.bokomo.co.za](http://www.bokomo.co.za) and includes any part or element thereof;
- c) "User" means any person who enters or uses the Bokomo Foods web site, notwithstanding the fact that such a person only visited the home page of the Bokomo Foods web site;
- d) References herein to the singular include the plural and vice versa; and
- e) Notwithstanding the fact that hyperlinks in these terms and conditions to copyright notices and legislation should be deemed part of these terms and conditions in terms of section 11 of the ECT Act, the fact that some or all of the hyperlinks may be non-operational, shall not play a role in determination of the validity and interpretation of these terms and conditions.

## 1. GENERAL

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- 1.1 Bokomo Foods is a division of Pioneer Foods (Pty) Ltd and is the second largest food company in South Africa;
- 1.2 Bokomo Foods has established itself as the market leader in breakfast cereals through well known brands such as Weetbix, Maltabella, ProNutro, Natures source Muesli and Up & Go, the first liquid breakfast cereal in South Africa; and
- 1.3 With the acquisition of Moir's, Bokomo Foods family is Kwaliti Biscuits, which has established brand names in biscuits. Bokomo's aggressive drive in new products and markets entrenches its brand as one of the most trusted in South African households.

## 2. ALLOWED USE AND LICENSE

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- 2.1 Bokomo Foods licenses the User to view, download and print the content of the Bokomo Foods web site, provided that such content is used for personal, educational and/or non-commercial purposes only;



- 2.2 Content from the Bokomo Foods web site shall not be used or exploited by Users for any commercial and non-private purposes without the prior written consent of Bokomo Foods;
- 2.3 Users may only access and use the Bokomo Foods web site for legal purposes;
- 2.4 The caching of the Bokomo Foods web site shall only be allowed if:
- 2.4.1 The purpose of the caching is to make the onward transmission of the content from the Bokomo Foods web site more efficient;
  - 2.4.2 The cached content is not modified in any manner whatsoever;
  - 2.4.3 The cached content is updated at least every 12 (twelve) hours; and
  - 2.4.4 The cached content is removed or updated when so required by Bokomo Foods;
- 2.5 If any User uses content from the Bokomo Foods web site in breach of the provisions detailed herein:
- 2.5.1 Bokomo Foods reserves the right to claim damages from the User;
  - 2.5.2 Bokomo Foods reserves the right to institute criminal proceedings against the User; and
  - 2.5.3 Bokomo Foods shall not be liable, in any manner whatsoever, for any damage, loss or liability that resulted from the use of such content by the User or any third party who obtained any content from the User;
- 2.6 Hyperlinks to the Bokomo Foods web site from any other source shall be directed at the home page of the Bokomo Foods web site. Bokomo Foods shall not be liable, in any manner whatsoever, for any damage, loss or liability that resulted from the use of content from the Bokomo Foods web site, if such content was accessed through a hyperlink not directed at the home page of the Bokomo Foods web site. Persons that wish to link to content beyond the home page of the Bokomo Foods web site shall do so at their own risk and indemnify Bokomo Foods against any loss, liability or damage that may result from the use of content from the Bokomo Foods web site, if such content was accessed through a hyperlink not directed at the home page of the Bokomo Foods web site;
- 2.7 No person may frame the Bokomo Foods web site, in any manner whatsoever, without the prior written consent of Bokomo Foods;
- 2.8 Apart from bona-fide search engine operators and use of the search facility provided on the Bokomo Foods web site by Users, no person may use or attempt to use any technology or applications (including web crawlers or web spiders) to search or copy content from the Bokomo Foods web site for any purposes, without the prior written consent of Bokomo Foods; and
- 2.9 All licenses and/or permissions granted in terms of this clause 2 are provided on a non-exclusive and non-transferable basis and may be terminated or cancelled by Bokomo Foods at any time without giving reasons therefore.

### **3. INTELLECTUAL PROPERTY RIGHTS AND DOMAIN NAME USE**

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All intellectual property on the Bokomo Foods web site, including but not limited to content, trademarks, domain names, patents, design elements, software, databases, text, graphics, icons and hyperlinks are the property of or licensed to Bokomo Foods and as such, are protected from infringement by domestic and international legislation and treaties. Subject to the rights licensed to the User in clause 2, all other rights to intellectual property on the Bokomo Foods web site are expressly reserved.

#### 4. SOFTWARE AND EQUIPMENT

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It is the responsibility of the User to acquire and maintain, at his/her own expense, the computer hardware, software, lines and access accounts required to access the Internet and the Bokomo Foods web site and/or download content from this web site.

#### 5. DISCLOSURES REQUIRED BY SECTION 43 OF THE ECT ACT

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Access to the services, content, software and content downloads available from the Bokomo Foods web site is classified as “*electronic transactions*” in terms of the ECT Act and therefore Users have the rights detailed in Chapter 7 of the ECT Act and Bokomo Foods has the duty to disclose the following information:

- 5.1 **The full name and legal status of the web site owner:** Bokomo Foods (Pty) Ltd Reg. no.: **XXXXXXXXXXXX**;
- 5.2 **VAT registration number:** 4610103865;
- 5.3 **Street address:** 32 Market Street, Paarl, 7645, South Africa;
- 5.4 **Postal address:** PO Box 20, Huguenot, 7645, South Africa;
- 5.5 **Telephone number:** +27 (0) 21 807 5100;
- 5.6 **Fax number:** +27 (0) 21 807 5280;
- 5.7 **Physical address for receipt of legal service:** 32 Market Street, Paarl, 7645, South Africa;
- 5.8 **Main business:** Main business of Bokomo Foods is the manufacturing, marketing, selling and distribution of food and food related products;
- 5.9 **The web site address of the Bokomo Foods web site is:** [www.bokomo.co.za](http://www.bokomo.co.za);
- 5.10 **The official e-mail address of the Bokomo Foods web site is:** [bokomofoods@pioneerfoods.co.za](mailto:bokomofoods@pioneerfoods.co.za) ;
- 5.11 **Codes of conduct to which the Bokomo Foods web site subscribes:** [Department of Trade and Industry](#), [Cape Town Regional Chamber of Commerce and Industry](#), [Advertising Standards Authority of South Africa](#), [South African Association for Food Science and Technology](#);
- 5.12 **Management:** The identities and contact details of the Bokomo Foods management team are available from: [Bokomo Foods management team](#);



- 5.13 **Copies of the Manual published in terms of section 51 of the Promotion of Access to Information Act 2 of 2000:** <http://www.pioneerfoods.co.za/paia>;
- 5.14 **The costs associated with the access and use of the Bokomo Foods web site are as follows:** Free;
- 5.15 **Alternative dispute resolution:** Subject to urgent and/or interim relief, all disputes regarding:
- 5.15.1 access to the Bokomo Foods web site;
  - 5.15.2 the inability to access the Bokomo Foods web site;
  - 5.15.3 the services and content available from the Bokomo Foods web site; or
  - 5.15.4 these terms and conditions,
- shall be referred to arbitration in terms of the [expedited rules](#) of the Arbitration Foundation of South Africa and such arbitration proceedings shall be conducted in Paarl in English. The arbitration ruling shall be final and the unsuccessful party shall pay the costs of the successful party on a scale as between attorney and client.
- 5.16 **Cooling-off period:** In terms of the operation of section 42(2)(c) of the ECT Act, the cooling-off provisions of the ECT Act do not apply to this website; and
- 5.17 **Users may lodge complaints** concerning the Bokomo Foods web site with Bokomo Foods at: [bokomofoodscustomer@pioneerfoods.co.za](mailto:bokomofoodscustomer@pioneerfoods.co.za) .

## 6. CHANGES AND AMENDMENTS

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Bokomo Foods expressly reserves the right, in its sole and absolute discretion, to do any of the following, at any time without prior notice:

- 6.1 change these terms and conditions;
- 6.2 change the content and/or services available from the Bokomo Foods web site;
- 6.3 discontinue any aspect of the Bokomo Foods web site or service(s) available from the Bokomo Foods web site; and/or
- 6.4 change the software and hardware required to access and use the Bokomo Foods web site.

## 7. PRIVACY

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- 7.1 Bokomo Foods shall take all reasonable steps to protect the personal information of Users and for the purpose of this clause, "personal information" shall be defined as detailed in the [Promotion of Access to Information Act 2 of 2000](#) (PAIA);
- 7.2 Bokomo Foods may electronically collect, store and use, amongst other, the following personal information of Users:
- 7.2.1 name and surname;



- 7.2.2 contact details;
  - 7.2.3 non-personal browsing habits and click patterns;
  - 7.2.4 e-mail address; and
  - 7.2.5 IP address.
- 7.3 Bokomo Foods collects, stores and uses the abovementioned information for the following purposes:
- 7.3.1 communicate requested information to the User;
  - 7.3.2 newsletter database;
  - 7.3.3 registration and / or authentication of Users; and
  - 7.3.4 to compile non-personal statistical information about browsing habits, click-patterns and access to the Bokomo Foods web site;
- 7.4 Information detailed above is collected either electronically by using cookies or is provided voluntarily by the User. Users may determine cookie use independently through their browser settings;
- 7.5 Bokomo Foods may collect, maintain, save, compile, share, disclose and sell any information collected from users, subject to the following provisions:
- 7.5.1 Bokomo Foods shall not disclose personal information from Users unless the User consents thereto;
  - 7.5.2 Bokomo Foods shall disclose information without the User's consent only through due legal process; and
  - 7.5.3 Bokomo Foods may compile, use and share any information that does not relate to any specific individual; and
- 7.6 Bokomo Foods owns and retains all rights to non-personal statistical information collected and compiled by Bokomo Foods.

## **8. HYPERLINKS TO THIRD PARTY SITES**

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- 8.1 Bokomo Foods may provide hyperlinks to web sites not controlled by Bokomo Foods (target sites) and such links do not imply any endorsement, agreement on or support for the content of such target sites; and
- 8.2 Bokomo Foods does not editorially control the content on such target sites and shall not be liable, in any manner whatsoever, for the access to, inability to access or content available on or through such target sites.

## **9. SECURITY**

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- 9.1 Bokomo Foods shall take all reasonable steps to secure the content of the Bokomo Foods web site and the information provided by and collected from Users from unauthorised access and/or disclosure. However, Bokomo Foods does not make any warranties or representations that content shall be 100% safe and secure;
- 9.2 Bokomo Foods is under no legal duty to encrypt any content or communications from and to the Bokomo Foods web site and is also under no legal duty to provide digital authentication of any page on the Bokomo Foods web site;
- 9.3 Users may not deliver or attempt to deliver, whether on purpose or negligently, any damaging code, such as computer viruses, to the Bokomo Foods web site or the server and computer network that support the Bokomo Foods web site. Notwithstanding criminal prosecution, any person who delivers any damaging code to the Bokomo Foods web site, whether on purpose or negligently, shall, without any limitation, indemnify and hold Bokomo Foods harmless against any and all liability, damages and losses Bokomo Foods and its partners / affiliates may suffer as a result of such damaging code;
- 9.4 Users may not develop, distribute or use any device to breach or overcome the security measures of the Bokomo Foods web site and Bokomo Foods reserves the right to claim damages any and all persons concerned with a security failure or breach; and
- 9.5 Any User who commits any of the offences detailed in sections 85 to 88 of the ECT Act shall, notwithstanding criminal prosecution, be liable for all resulting liability, loss or damages suffered and/or incurred by Bokomo Foods and its partners / affiliates.

## **10. DISCLAIMER AND LIMITATION OF LIABILITY**

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- 10.1 Subject to the provisions of sections 43(5) and 43(6) of the ECT Act, if applicable, and as far as allowed by law, Bokomo Foods (including its owners, directors, employees, suppliers, Internet service providers, partners, affiliates and agents) shall not be liable for any damage, loss or liability of any nature incurred by whomever and resulting from:
- 10.1.1 access to the Bokomo Foods web site;
  - 10.1.2 access to web sites linked to the Bokomo Foods web site;
  - 10.1.3 inability to access the Bokomo Foods web site;
  - 10.1.4 inability to access web sites linked to the Bokomo Foods web site;
  - 10.1.5 content available on the Bokomo Foods web site;
  - 10.1.6 services available from the Bokomo Foods web site;
  - 10.1.7 downloads and use of content from the Bokomo Foods web site;
  - 10.1.8 any other reason not directly related to Bokomo Foods' gross negligence.
- 10.2 The Bokomo Foods web site is supplied on an "as is" basis and has not been compiled to meet the User's individual requirements. It is the responsibility of the User to satisfy himself or herself, prior to entering into this agreement with Bokomo Foods, that the content available from and through the Bokomo Foods web site meet the User's individual requirements and is compatible with the User's computer hardware and/or software;



- 10.3 Information, ideas and opinions expressed on the Bokomo Foods web site should not be regarded as professional advice or the official opinion of Bokomo Foods and Users are encouraged to seek professional advice before taking any course of action related to the information, ideas or opinions expressed on the Bokomo Foods web site;
- 10.4 Bokomo Foods does not make any warranties or representation that content and services available from the Bokomo Foods web site will in all cases be true, correct or free from any errors. Bokomo Foods shall take all reasonable steps to ensure the quality and accuracy of content available from the Bokomo Foods web site and encourage Users to report incorrect and untrue information subject to the right of Bokomo Foods to rely on its free expression rights and determine, in its sole and absolute discretion, the contents of this web site; and
- 10.5 Bokomo Foods does not make any warranties or representations that the Bokomo Foods web site shall be available at all times. Users acknowledge that the Bokomo Foods web site may be unavailable due to updates or other causes beyond the reasonable control of Bokomo Foods, including, but not limited to virus infection, unauthorised access, power failure or other “acts of God.”

## **11. REMOVAL AND CORRECTION OF CONTENT**

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Users are encouraged to report untrue, inaccurate, defamatory, illegal, infringing and/or harmful content available from the Bokomo Foods web site to Bokomo Foods and Bokomo Foods undertakes to correct and/or remove such content or any part thereof if the person reporting such content provided reasonable grounds to prove the alleged nature of the content.

## **12. INTERCEPTION OF COMMUNICATIONS**

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- 12.1 Subject to the provisions of the [Regulation of Interception of Communications \(RIC\) Act 70 of 2002](#), the User agrees to Bokomo Foods’s right to intercept, block, filter, read, delete, disclose and use all communications sent or posted by the User to the Bokomo Foods web site, its staff and employees; and
- 12.2 The User agrees and acknowledges that the consent provided by the User in clause 12.1 satisfies the “writing” requirement as detailed in the ECT Act and the RIC Act.

## **13. ENTIRE AGREEMENT AND SEVERABILITY**

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- 13.1 These terms and conditions constitute the entire agreement between Bokomo Foods and the User and shall take precedent over any disclaimers and/or legal notices attached to any communications and/or postings received by Bokomo Foods from the User;
- 13.2 Any failure by Bokomo Foods to exercise or enforce any right or provision shall in no way constitute a waiver of such right or provision; and
- 13.3 In the event that any term or condition detailed herein is found unenforceable or invalid for any reason, such term(s) or condition(s) shall be severable from the remaining terms and conditions. The remaining terms and conditions shall remain enforceable and applicable.



#### **14. AGREEMENT IN TERMS OF SECTION 21 OF THE ECT ACT**

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The User and Bokomo Foods agree that:

- 14.1 the User shall be bound to these term and conditions and such agreement is concluded in Cape Town (South Africa) at the time the User enters the Bokomo Foods web site for the first time;
- 14.2 data messages (as defined in the ECT Act) addressed by the User to Bokomo Foods shall only be deemed to have been received if and when responded to;
- 14.3 data messages (as defined in the ECT Act) addressed to the User by Bokomo Foods shall be deemed to be received by the User as detailed in section 23(b) of the ECT Act;
- 14.4 data messages (as defined in the ECT Act) addressed by the User to Bokomo Foods shall be deemed to have been created and sent by the User from within the geographical boundaries of South Africa;
- 14.5 electronic signatures, encryption and/or authentication is not required for valid electronic communications between the User and Bokomo Foods; and
- 14.6 The User agrees and warrants that data messages that are sent to Bokomo Foods from a computer, IP address or mobile device normally used by or owned by the User, was sent and/or authorised by the User personally.

#### **15. APPLICABLE AND GOVERNING LAW**

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Subject to clause 5.16, the Bokomo Foods web site is hosted, controlled, and operated from the Republic of South Africa and therefore the South African law enforced by the South African courts governs the use or inability to use the Bokomo Foods web site, its content, services and these terms and conditions.

#### **16. LEGAL COSTS**

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Bokomo Foods shall not be liable for costs incurred by Users to obtain professional advice relating to these terms and conditions.

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**END**

