**SUPPLY AGREEMENT  
(Upro-sanitizer dispenser)**

entered into between

|  |  |  |
| --- | --- | --- |
| **Name** | : | Unilever South Africa Proprietary Limited |
| **Company Registration Number** | : | 1939/012365/07 |
| **Physical Address** | : | 15 Nollsworth Crescent, Durban North, 4019 |
| **VAT Number** | : | 4680205715 |
| **Contact Person** | : | Jeffery Madkins |
| **Email Address** | : | jeffery/.madkins@unilever.com |
| hereafter referred to as “**Unilever**” | | |

and

|  |  |  |
| --- | --- | --- |
| **Name** | : | Click or tap here to enter text. |
| **Registration Number** | : | Click or tap here to enter text. |
| **Physical Address** | : | Click or tap here to enter text. |
| **VAT Number** | : | Click or tap here to enter text. |
| **Contact Person** | : | Click or tap here to enter text. |
| **Email Address** | : | Click or tap here to enter text. |
| hereafter referred to as the “**Operator**” | | |

1. DEFINITIONS

Unless the context indicates otherwise, the following words, terms or expressions shall have the meanings assigned to them hereunder in this Agreement and cognate expressions shall have corresponding meanings:

* 1. “**Additional Dispenser**” means any and all additional and/or replacement dispenser and other equipment used to dispense Lifebuoy hand sanitizer supplied by Unilever to the Operator as contemplated in clause 9;
  2. “**Agreement**” means this written supply agreement;
  3. “**Business Day**” means a day which is not a Saturday, Sunday or a public holiday gazetted in the Republic of South Africa from time to time;
  4. “**Effective Date**” means Click or tap to enter a date., notwithstanding the Signature Date;
  5. “**Establishment**” means Click or tap here to enter text., situated at Click or tap here to enter text. operated by the Operator;
  6. “**Parties**” means the parties to this Agreement, and, “**Party**” means any one of them;
  7. “**Period**” means a continuous period of Click or tap here to enter text. months calculated from the Effective Date;
  8. “**Signature Date**” means the date of signature of this Agreement by the Party last signing;
  9. "**Tax**" means any present or future tax, levy, impost, duty, charge, fee, deduction or withholding of any nature and whatever called, (together with any penalties, fines or interest imposed thereon), imposed, levied, collected, withheld or assessed by any person on any other person in any jurisdiction and with respect to anything, and "**Taxes**" and "**Taxation**" has a corresponding meaning;
  10. “**Dispenser**” means the equipment used in dispensing Lifebuoy hand sanitizer as listed in Annexure “B”;
  11. “**Unilever Sanitizer products**” means the following brands of hand sanitizer, viz. Lifebuoy;
  12. “**Year**” means each successive 12 (twelve) month period during the duration of this Agreement, commencing on the Effective Date.

1. INTERPRETATION
   1. The headings of the clauses in this Agreement are for the purpose of convenience and reference only and shall not be used in the interpretation of, nor modify nor amplify, the terms of this Agreement nor any clause hereof.
   2. Unless the context indicates otherwise, words signifying:
      1. any one gender includes the other genders;
      2. the singular include the plural and vice versa; and
      3. natural persons include created entities (corporate or unincorporate) and the state and vice versa.
   3. A reference to any statutory body, court or association for the purposes of appointing an expert or arbitrator shall be construed as a reference to that statutory body, court or association as at the Signature Date, and any successor.
   4. A reference to any legislation (including statutes, ordinances, regulations and by-laws) shall be construed as a reference to that legislation as at the Signature Date and as may be amended, re-enacted or substituted from time to time, provided that if as a result of such amendment, re-enactment or substitution, the specific requirements of a section referred to in this Agreement are changed, the relevant provision of this Agreement shall be read as if it had been amended as necessary, without the necessity for an actual amendment.
   5. If figures are referred to in numerals and in words and if there is a conflict between the two, the words shall prevail.
   6. Whenever any number of days is prescribed in this Agreement, it excludes the first and includes the last day.
   7. If the due date for performance of any obligation in terms of this Agreement is a day which is not a Business Day, then (unless otherwise stipulated) the due date for performance of the relevant obligation shall be the immediately preceding Business Day.
   8. The rule of construction that a contract shall be interpreted against the Party responsible for drafting or preparing it, shall not apply to this Agreement.
   9. If a term is defined in a particular clause in this Agreement, then that term, unless it is clear from the clause in question that the term has limited application to the relevant clause, shall bear the meaning ascribed to it throughout this Agreement, notwithstanding that that term has not been defined in clause 1.
   10. Prior drafts of this Agreement shall not be admissible in any Proceedings as evidence of any matter relating to any negotiations preceding the Signature Date.
   11. Any reference in this Agreement to a Party shall include a reference to that Party’s assigns expressly permitted under this Agreement.
   12. The words "include", "including" and "in particular" shall be construed as being by way of example or emphasis only and shall not be construed as, nor shall they take effect as, limiting the generality of any preceding word/s.
   13. The words "other" and "otherwise" shall not be construed as, nor shall they take effect as, limiting preceding words if a wider construction is possible.
   14. Any reference in this Agreement to any other agreement or document shall be construed as a reference to such other agreement or document as at the Signature Date, and as amended from time to time.
   15. Defined terms appearing in this Agreement in uppercase shall be given their meaning as defined, while the same terms appearing in lowercase shall be interpreted in accordance with their plain English meaning.
   16. Terms, acronyms, and phrases not defined and known in general commercial or industry specific practice, shall be interpreted in accordance with their generally accepted meanings.
   17. Any reference in this Agreement to “writing” or “written” shall, notwithstanding anything to the contrary in this Agreement, be read and construed as excluding any form of electronic signature.
   18. Any reference in this Agreement to:
       1. "business hours" shall be construed as being the hours between 08h00 and 16h30 on any Business Day. Any reference to time shall be based on Central Africa Time (CAT);
       2. "days" shall be construed as calendar days unless qualified by the word "Business";
       3. "laws" means all constitutions, statutes, regulations, by-laws, codes, ordinances, decrees, rules, judicial, arbitral, administrative, ministerial, departmental or regulatory judgments, orders, decisions, rulings, or awards, policies, voluntary restraints, guidelines, directives, compliance notices, abatement notices, agreements with, requirements of, or instructions by any governmental body, and the common law, and "law" has a corresponding meaning;
       4. "person" means any natural person, company, close corporation, trust, partnership, joint venture, association, unincorporated association, governmental body, or other entity whether or not having separate legal personality.
2. BACKGROUND
   1. The Operator operates the Establishment.
   2. Unilever is prepared to supply the Lifebuoy Hand sanitizer dispensers to the Operator on the terms and conditions contained in this Agreement.
3. COMMENCEMENT AND DURATION
   1. This Agreement shall commence on the Effective Date and will remain in force for the Period, unless otherwise terminated in accordance with its provisions.
   2. Notwithstanding anything to the contrary in this Agreement if, after termination of this Agreement for any reason whatsoever, the Supplier continues to use the Hand Sanitizer Dispenser, the Parties expressly agree that the provisions of clause 8 of this Agreement shall continue to apply (to the extent possible) until the Operator has returned the Dispenser to Unilever as contemplated in clause 11.
4. OPERATOR DOCUMENTS

The Operator shall, as soon as reasonably possible after the Signature Date, and in any event, on or before the Effective Date provide Unilever with certified copies of the following documents:

* 1. its business licence;
  2. its certificate of acceptability (for food products);
  3. its B-BBEE certificate.

1. SUPPLY OF HAND SANITIZER DISPENSERS
   1. Provided that the Operator has fully and timeously complied with its obligations in terms of clause 5, Unilever shall, on or before the Effective Date, supply the Dispenser to the Operator, for use in terms of this Agreement.
   2. The Operator shall:
      1. for the duration of this Agreement, be entitled to make use of the Dispenser on the terms and conditions contained in this Agreement;
      2. upon termination of this Agreement, in any manner whatsoever, return the Dispenser to Unilever in the same condition as it was supplied, fair wear and tear, excepted.
2. OWNERSHIP AND RISK

Notwithstanding anything to the contrary contained in this Agreement:

* 1. ownership of the Dispenser shall, at all times remain with Unilever;
  2. risk in and to the Dispenser shall pass to the Operator on delivery of the Dispenser in terms of clause 6.1, and shall remain with the Operator until the Dispenser has been returned to Unilever in terms of clause 11.

1. USE OF DISPENSER
   1. The Dispenser shall, at all times, be used exclusively with Unilever hand sanitizer products; provided that if Unilever confirms, in writing, that it is unable to supply sufficient Unilever Hand sanitizer products to meet the Operator’s demand for any period during the currency of this Agreement, then the Operator shall be permitted, but not required, to make use of the Dispenser with other hand sanitizer products for such period(s) which Unilever has confirmed, in writing, that it is unable to supply sufficient Unilever Hand Sanitizer Products.
   2. The Dispenser shall be used in the front of the Operators establishment to provide sanitation for entering guests or within the back of house environment to provide sanitation for kitchen staff
   3. The Dispenser may not be used for any other purpose, as set out in this clause 8 without the express prior written consent of Unilever.
2. ANCILLARY SUPPLY ARRANGEMENTS

The Operator shall, as soon as reasonably possible after the Signature Date, and in any event, on or before the Effective Date, be required to conclude written supply agreements, on terms acceptable to Unilever, in respect of Unilever Hand Sanitizer with:

* 1. [●].

1. RETURN OF DISPENSER
   1. The Operator shall, at its cost and expense, return the Dispenser to Unilever upon termination or cancellation of this Agreement.
   2. Notwithstanding the provisions of clause 11.1, the Operator shall, at its cost and expense, return the Dispenser to Unilever immediately on Unilever’s written demand should the Operator:
      1. commit a breach of any of the provisions of this Agreement; or
      2. have any judgment entered against it; or
      3. compromise or attempt to compromise with, or to defer, or attempt to defer, payment of debts owing by it to its creditors generally; or
      4. commit an act of insolvency as envisaged by the Insolvency Act No. 24 of 1936, or an application is brought for its liquidation, or it passes a resolution for its voluntary liquidation, or it passes a resolution for its business rescue; or
      5. become “financially distressed” as contemplated in the Companies Act; or
      6. breach a warranty contained in clause 11.
2. OPERATOR’S WARRANTIES
   1. The Operator warrants to and in favour of Unilever, on the Signature Date and each day for the duration of this Agreement that it shall:
      1. comply with Unilever’s responsible sourcing policy (a copy of which is attached marked Annexure “A”);
      2. make use of the Dispenser only as contemplated in clause 8;
      3. take reasonable and necessary precautions in the use and storage of the Dispenser;
      4. clean and maintain the Dispenser in accordance with applicable industry standards and otherwise as required by law;
      5. insure the Dispenser for its full replacement value;
      6. at all times, comply with all laws, including those applicable to the execution of its obligations in terms of this Agreement;
      7. pay and discharge all Taxes imposed upon it or its assets within the time period allowed without incurring penalties, and in particular, shall be liable for all Taxes arising as a result of receipt and use of the Dispenser;
   2. Each of the warranties given by the Operator in terms of this clause 11 shall:
      1. be a separate warranty and will in no way be limited or restricted by inference from the terms of any other warranty or by any other words in this Agreement;
      2. continue and remain in force notwithstanding the termination of this Agreement; and
      3. *prima facie* be deemed to be material and to be a material representation inducing Unilever to enter into this Agreement.
3. LIMITATION OF LIABILITY AND INDEMNITY
   1. Notwithstanding anything to the contrary contained in this Agreement neither Party shall be liable to the other Party under any circumstances for any indirect, consequential, punitive, special, or incidental loss or damages of any nature arising out of or in connection with this Agreement.
   2. The Operator hereby:
      1. waives any and all claims against Unilever, together with its holding company, subsidiary and associated companies (the “**Unilever Group**”) for any loss or damage to property or any injury to, or death of, any person arising from the supply and/or use of the Dispenser and/or the Unilever Tea Products.
      2. indemnifies the Unilever Group (and its respective directors, officers and employees) and keeps them indemnified against any and all loss or damage which the Unilever Group has suffered, or may suffer, as a result of loss or damage to property or any injury to, or death of, any person arising from the supply and/or use of the Dispenser and/or the Unilever Tea Products.
4. RECIPROCAL WARRANTIES
   1. Each Party hereby warrants to and in favour of the other Parties that:
      1. it has the legal capacity and has taken all necessary corporate action required to empower and authorise it to enter into this Agreement;
      2. this Agreement constitutes an agreement valid and binding on it and enforceable against it in accordance with its terms;
      3. the execution of this Agreement and the performance of its obligations hereunder does not and shall not contravene any law or regulation to which that Party is subject, or contravene any provision of that Party's constitutional documents;
      4. to the best of its knowledge and belief, it is not aware of the existence of any fact or circumstance that may impair its ability to comply with all of its obligations in terms of this Agreement;
      5. the natural person who signs and executes this Agreement on its behalf is validly and duly authorised to do so;
      6. it is not relying upon any statement or representation by or on behalf of any other Party, except those expressly set forth in this Agreement.
   2. Each of the warranties given by the Parties in terms of this clause 13 shall:
      1. be a separate warranty and will in no way be limited or restricted by inference from the terms of any other warranty or by any other words in this Agreement;
      2. continue and remain in force notwithstanding the termination of this Agreement; and
      3. *prima facie* be deemed to be material and to be a material representation inducing the other Party to enter into this Agreement.
5. CONFIDENTIALITY
   1. Subject to clauses 15.2 and 15.3, each Party undertakes to the other that it will treat as confidential the terms of this Agreement, together with all information relating to the affairs of the other Party communicated to it hereunder or otherwise in connection with this Agreement, and will not disclose such information to any person, firm (other than to its B-BBEE Verification Professional, attorneys, auditors and other professional advisers) or to the media, and will not use such information other than for the purposes of this Agreement, subject always to any prior specific authorisation in writing by the Party concerned to such disclosure or use.
   2. The foregoing provisions shall not apply to any information which:
      1. is in the public domain other than by default of the recipient party;
      2. is obtained by the recipient party from a bona fide third party having the right to disseminate such information;
      3. is or has already been independently generated by the recipient party;
      4. is required to be disclosed by law or a valid order of a court of competent jurisdiction or at the request of any governmental or other regulatory authority or agency or the rules of a registered exchange, in which event the recipient party shall notify the other as promptly as practicable (and if possible prior to making any disclosure) and shall use its reasonable endeavours to seek confidential treatment of such information.
   3. Nothing in this clause 15 will prohibit a Party or limit the right of a Party as part of any legal process or court proceedings or proceedings before an arbitrator to disclose any confidential or any other information in order to enforce or protect its rights.
6. DEFAULT

If a Party commits any breach of this Agreement ("**Defaulting Party**") and fails to remedy such breach within 5 Business Days ("**Notice Period**") of written notice requiring the breach to be remedied, then the Party giving the notice ("**Aggrieved Party**") will be entitled, at its option:

* 1. to claim immediate specific performance of all or any of the Defaulting Party's obligations under this Agreement, with or without claiming damages, whether or not such obligation has fallen due for performance and to require the Defaulting Party to provide security to the satisfaction of the Aggrieved Party for the Defaulting Party's obligations; or
  2. to cancel this Agreement and to retain as pre-estimate liquidated damages, any amount paid by or on behalf of the Defaulting Party, with or without claiming damages, in which case written notice of the cancellation shall be given to the Defaulting Party, and the cancellation shall take effect on the giving of the notice. No Party shall be entitled to cancel this Agreement unless the breach is a material breach. A breach will be deemed to be a material breach if:
     1. it is capable of being remedied, but is not so remedied within the Notice Period; or
     2. it is incapable of being remedied and payment in money will compensate for such breach but such payment is not made within the Notice Period.

1. DOMICILE
   1. For the purposes of the giving of notices and the serving of legal process in terms of this Agreement, the Parties choose as *domicilium citandi et executandi* (“**domicilium**”) the address and contact details specified on the first page of this Agreement.
   2. Any Party may at any time, by notice in writing to the other Party, change its domicilium to any other address, which is not a post office box or *post restante* in South Africa.
   3. Any notice given in connection with this Agreement shall, save where a particular form of notice is stipulated, be:
      1. delivered by hand; or
      2. sent by courier; or
      3. sent by email;

to the domicilium chosen by the Party concerned.

* 1. A notice given as set out above shall be deemed to have been duly given (unless the contrary is proved):
     1. if delivered by hand, on the date of delivery; or
     2. if sent by courier, on the date of delivery by the courier service concerned; or
     3. if sent by email, on the expiration of 3 days after the time of transmission.

1. DISPUTE RESOLUTION
   1. In the event of any dispute in relation to any matter pertaining to, or arising out of or in connection with, this Agreement its breach or termination, then any Party may give written notice to the other Party referring the dispute to arbitration for final determination in accordance with the provisions of this clause 17 (“**Arbitration Notice**”).
   2. The arbitration shall be:
      1. held at Durban, South Africa;
      2. conducted in the English language;
      3. held before a single arbitrator;
      4. subject to the provisions of this clause 17, conducted in accordance with the AFSA Rules; and
      5. held as soon as is reasonably practicable in the circumstances and with a view to it being completed within 30 (thirty) Business Days of the date of the Arbitration Notice.
   3. The arbitrator shall be agreed upon between the Parties; provided that should the Parties fail to agree on an arbitrator within 3 (three) Business Days of the date of the Arbitration Notice, the arbitrator shall, at the written request of any Party, be appointed in terms of the AFSA Rules.
   4. The arbitrator shall determine which Party shall pay the costs of and incidental to the arbitration or, if more than one Party is to contribute, the ratio of their respective contributions, and the scale on which such costs are to be paid.
   5. Subject to each Party’s rights of appeal in accordance with the AFSA Rules, the Parties hereby irrevocably agree that the decision of the arbitrator shall be final and binding on them, shall be carried into effect, and shall be capable of being made an order of any court of competent jurisdiction.
   6. The provisions of this clause 17:
      1. constitute irrevocable consent by the Parties to any proceedings in terms of this clause 17 and no Party shall be entitled to withdraw therefrom or claim at any such proceedings that it is not bound by such provisions;
      2. are severable from the rest of this Agreement and shall remain in effect despite the termination, or invalidity for any reason, of this Agreement; and
      3. shall not preclude any Party from obtaining interim relief on an urgent basis from any court of competent jurisdiction pending the decision of the arbitrator.
2. GOVERNING LAW AND JURISDICTION
   1. This Agreement shall be governed by, interpreted and otherwise applied in all respects in accordance with, the laws of South Africa.
   2. Save as set out in clause 17, the KwaZulu-Natal High Court, Durban, South Africa shall have non-exclusive jurisdiction to hear and determine any suit, action or Proceedings which may arise out of or in connection with this Agreement, and, for such purpose, each Party irrevocably consents and submits to the jurisdiction of such court.
3. CO-OPERATION AND GOOD FAITH
   1. The Parties shall co-operate with each other and do all such things as may be reasonably required of them in order to facilitate the implementation of this Agreement in accordance with its terms and objectives.
   2. The Parties shall display good faith in their dealings with each other.
4. CESSION AND ASSIGNMENT
   1. This Agreement is personal to the Operator and neither the Agreement nor any part thereof may be ceded, delegated, assigned, sub-contracted or transferred in any other manner by the Operator to a third party without Unilever’s prior written consent.
   2. It is agreed and recorded that Unilever is part of Unilever PLC group of companies (the “**Group**”), and, that the Group undergoes restructure from time to time. Unilever may accordingly cede, assign or delegate any of its rights and/or obligations in terms of this Agreement to any other Group company without requiring the consent of the Operator.
5. WHOLE AGREEMENT, NO AMENDMENT
   1. This Agreement constitutes the whole agreement between the Parties relating to the subject matter hereof and supersedes any other discussions, agreements and/or understandings regarding the subject matter hereof.
   2. No amendment or consensual cancellation of this Agreement or any provision or term hereof or of any agreement, bill of exchange or other document issued or executed pursuant to or in terms of this Agreement and no settlement of any disputes arising under this Agreement and no extension of time, waiver or relaxation or suspension of or agreement not to enforce or to suspend or postpone the enforcement of any of the provisions or terms of this Agreement or of any agreement, bill of exchange or other document issued pursuant to or in terms of this Agreement shall be binding unless recorded in a written document signed by the Parties (or in the case of an extension of time, waiver or relaxation or suspension, signed by the Party granting such extension, waiver or relaxation). Any such extension, waiver or relaxation or suspension which is so given or made shall be strictly construed as relating strictly to the matter in respect whereof it was made or given.
   3. To the extent permissible by law no Party shall be bound by any express or implied or tacit term, representation, warranty, promise or the like not recorded herein, whether it induced the contract and/or whether it was negligent or not.
6. INDEPENDENT ADVICE

Each of the Parties hereto acknowledges that it has been free to secure independent legal and/or other advice as to the nature and effect of all of the provisions of this Agreement and that it has either taken such independent legal and/or other advice or dispensed with the necessity of doing so.

1. GENERAL
   1. INDULGENCES

No indulgences granted by either Party shall constitute a waiver or abandonment of either of the Parties rights under this Agreement. Accordingly, neither Party shall be precluded because of having granted that indulgence, from exercising its rights which may have arisen in the past or which may arise in the future under this Agreement.

* 1. NO REMEDY EXCLUSIVE

No remedy granted by this Agreement shall exclude any other remedy available at law.

* 1. SEVERABILITY

Any provision in this Agreement which is or may become illegal, invalid or unenforceable in any jurisdiction affected by this Agreement shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability and shall be treated *pro non scripto* and severed from the balance of this Agreement, without invalidating the remaining provisions of this Agreement or affecting the validity or enforceability of such provision in any other jurisdiction

* 1. USE OF THE NAME OF THE OTHER PARTY

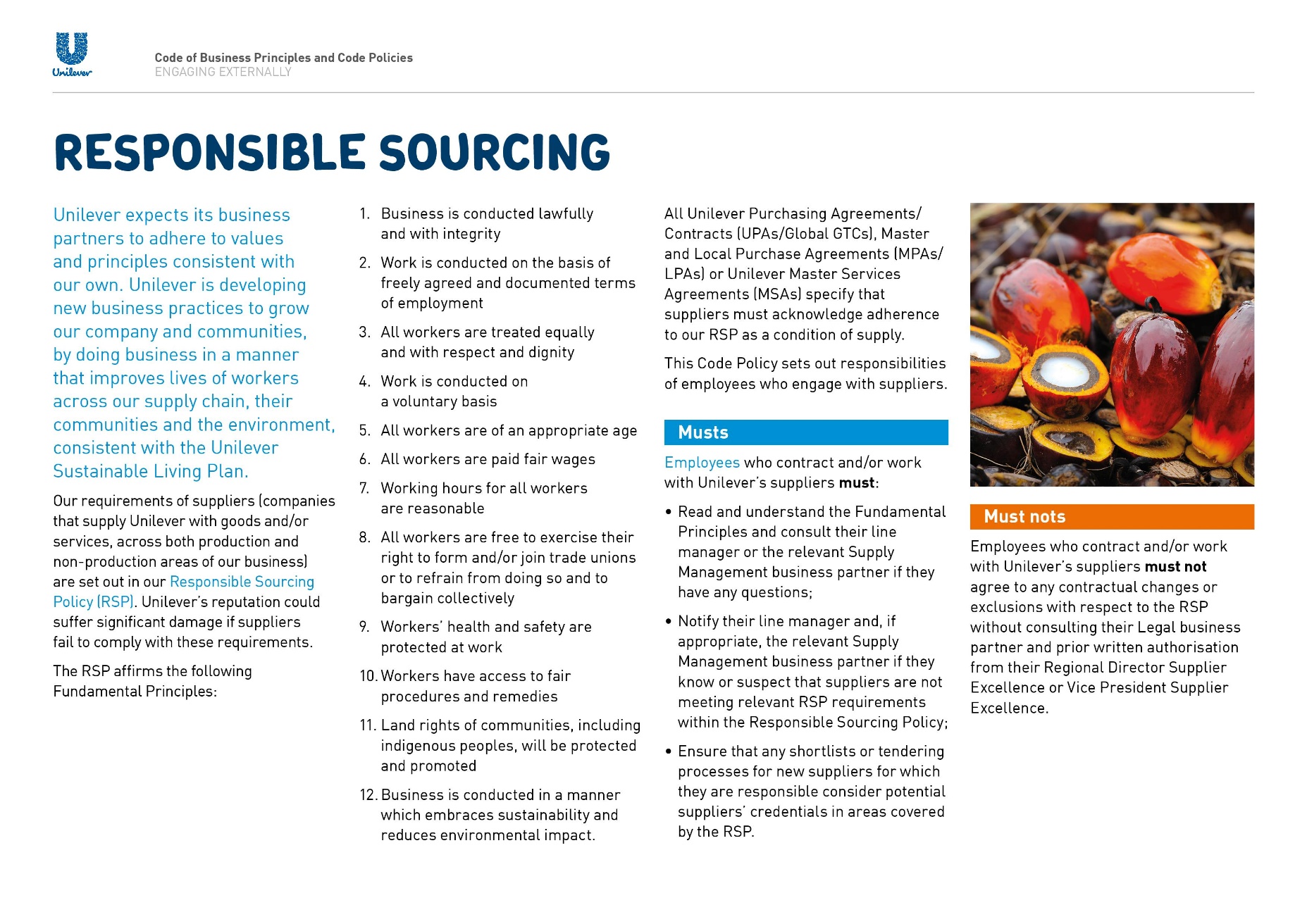
No Party to this Agreement shall use the name of any other Party to this Agreement in any advertising or for the purposes of promoting the former’s business or products.

* 1. EXCLUSION OF ELECTRONIC SIGNATURE

The reference in this Agreement to “writing” shall, notwithstanding anything to the contrary in this Agreement, be read and construed as excluding any form of electronic signature.

1. COSTS
   1. Each Party shall bear its own costs incidental to the negotiation, preparation and implementation of this Agreement and documents, including any other documents necessary to give effect to this Agreement.
   2. Each Party shall be liable for all costs incurred by the other Party in the recovery of any moneys hereunder (including collection charges and attorney and own client costs) whether incurred prior to or during the institution of legal proceedings, including any appeals, or if judgment has been granted, in connection with the satisfaction or enforcement of any such judgment.
2. SIGNATURE
   1. This Agreement may be executed in counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same Agreement as at the date of signature of the Party last signing one of the counterparts.
   2. The Parties record that it is not required for this Agreement to be valid and enforceable that a Party shall initial the pages of this Agreement and/or have its signature of this Agreement verified by a witness.

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Signed at:-** |  |  | **Signed at:-** |  |
| **Date:-** |  |  | **Date:-** |  |
| **Sign:** | |  | **Sign:** | |
| **For and on behalf of Unilever South Africa Proprietary Limited** | |  | **For and on behalf of:-** | |
| **Name** |  |  | **Name** |  |
| **Designation** |  | **Designation** |  |
| I warrant that I have been duly authorised to sign this Agreement | |  | I warrant that I have been duly authorised to sign this Agreement | |

**Annexure “A”**

**Annexure “B”**

**Dispenser**