



# VENDOR AGREEMENT

Entered into by, and between: -

## MADE IN AFRICA BTOB (PTY) LTD

COMPANY NAME	Made in Africa BTOB (Pty) Ltd
REGISTRATION No	2021/001639/07
REGISTERED ADDRESS:	No. 87 Kya Sands Road, Kya Sands, Gauteng
BUSINESS ADDRESS:	No. 87 Kya Sands Road, Kya Sands, Gauteng
EMAIL ADDRESS:	ryan@madeinafricab2b.com
TELEPHONE & FAX NUMBERS:	T: 011 708 0313 M: +27 71 352 4658
AUTHORIZED DIRECTORS:	Mr. Ryan Edwards Mr. Craig Chamberlain
VAT NUMBER:	

(hereinafter referred to as “The Company”)

- and -

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COMPANY NAME	
REGISTRATION No	
REGISTERED ADDRESS:	
BUSINESS ADDRESS:	
EMAIL ADDRESS:	
TELEPHONE & FAX NUMBERS:	
AUTHORIZED DIRECTORS:	
EMAIL FOR INVOICING:	
VAT NUMBER:	

(Hereinafter referred to as “The Vendor”)





**WHEREAS** the company has created an online platform for the Vendor to present its products and / or services for sale to prospective customers and which online sales platform is known by the uniform resource locator of [www.madeinafricab2b.com](http://www.madeinafricab2b.com) and which operates as an E-Commerce online store;

**AND WHEREAS** the Vendor wants to upload and present its products and / or services on the online platform and to make use of the administrative and technical assistance rendered by the Company in order to maximise its sales and market reach;

**AND WHEREAS** the parties collectively now wish to formalize their agreement for these purposes and their working relationship in terms of this Agreement and its provisions with Annexures thereto;

## 1. DEFINITIONS

In this agreement unless the context otherwise requires, the following words and expressions shall have the meanings assigned to them hereunder:

- 1.1 **“The Parties”** shall collectively refer to the parties cited in the preamble of this agreement and singularly defined by reference to the Company and the Vendor;
- 1.2 **“The product(s)”** shall mean the products marketed, sold or distributed which products are manufactured or supplied by the Vendor;
- 1.3 **“the Customer”** shall mean any person or juristic entity that engages with the Company’s online platform for purposes of purchasing products advertised for sale by the Vendor;
- 1.4 **“Online Platform”** means, colloquially, the website owned, operated and administered by the Company and with uniform resource locator being [www.madeinafricab2b.com](http://www.madeinafricab2b.com) and which operates as an E-Commerce online store;
- 1.5 **“Logistics Charges”** will mean any charges associated with the collection and delivery of the Vendor’s product from its warehouse or place of business to the customer and as per quotation obtained by the Company and which may include shipping charges, overland couriering and other delivery charges;
- 1.6 **“Subscription package”** will mean the elective subscription package that the Vendor chooses to have applicable with the associated rights, responsibilities for each party emanating from such package;
- 1.7 words importing natural persons shall include a reference to bodies corporate and other legal personae and *vice versa*;
- 1.8 words importing the masculine shall include a reference to the feminine and other genders;
- 1.9 words importing the singular shall include a reference to the plural and *vice versa*;





- 1.10 annexes to this agreement shall be deemed to have been incorporated herein and shall form an integral part hereof;
- 1.11 a reference to a party in a document includes that party's successors and permitted assigns;
- 1.12 any reference to an enactment is to that enactment as at the date of signature hereof and as amended or re-enacted from time to time;
- 1.13 a reference to a document includes an amendment or supplement to, or replacement or notation of that document;
- 1.14 the captions appearing in this agreement are for reference purposes only and shall not affect the interpretation hereof;
- 1.15 if any provision is a definition (or under this heading "*Interpretation*" and/or any other heading in this agreement) and is a substantive provision conferring rights or imposing obligations on any party, notwithstanding that is only in the definition (or such other clause), effect shall be given to it as if it were a substantive provision in the body of the agreement;
- 1.16 where figures are referred to in numerals and words, if there is any conflict between the two, the words shall prevail.

## 2. THE COMPANY'S OBLIGATIONS

- 2.1 The company undertakes, unless precluded to do so by *force majeure* (as defined below) and unforeseen technical difficulties, to make available the online platform on a 24-hour basis and for the platform to be accessible by prospective customers at any time;
- 2.2 In the event of unforeseen difficulties, the Company undertakes to take all such emergency and urgent technical steps to reinstate the functionality and online availability of the online platform as soon as possible and will, where possible, post a notice to such effect on the website to inform prospective customers of any technical difficulties and the estimated time of such repairs;
- 2.3 The Company will ensure that the Vendor's product details and images as supplied by the Vendor are posted on the online platform in the exact wording and format as supplied by the Vendor and to make no alterations thereto unless requested to do so by the Vendor;
- 2.4 The Company will, where possible and where contacted by prospective customers regarding queries about the Vendor's products and / or services, make such enquiries with the Vendor timeously in order to raise the customer satisfaction level;
- 2.5 The Company undertakes, as part of its obligations, to administrate the shipping and delivery of the Vendor's product from the Vendor's warehouse or place of business to the prospective Customer's place of business. On





each transaction, a separate quotation will be generated indicating the logistics charges for the purchase and sale between the Vendor and the prospective customer.

- 2.6 The Company will, after receipt of the quotation for the logistics charges, communicate same to the prospective customer on the online platform and inform the customer of the final amount due inclusive of the purchase price of the Vendor's goods and / or services and the logistics charges and administrative charges, if any;
- 2.7 Upon receipt of payment from the customer, the Company will inform the Vendor of the sale of the product and make such arrangements for the collection of the Vendor's product for delivery and oversee the logistics process;
- 2.8 Where necessary, the Company will also arrange for adequate and reasonable insurance on the goods-in-transit and will ensure that same is covered by the logistics company engaged for the logistical administration of the transaction between the Vendor and the prospective customer;

### **3. VENDOR'S OBLIGATIONS**

- 3.1 The Vendor undertakes that all goods or services advertised for sale on the online platform conforms to the applicable SABS-standards governing that area of goods or services and warrants that same is fit for the purpose that it is made or sold;
- 3.2 The Vendor is hereby informed and understands that the Company provides an intermediary service between the Vendor and prospective customers, and as such, has no control over the quality or other aspects of the Vendor's goods and / or services advertised;
- 3.3 Accordingly, the Vendor hereby indemnifies the Company from any claims relating to the Consumer Protection Act, 68 of 2008 or any claim originating against a Vendor's product under any statutory or common law basis;
- 3.4 The Vendor further warrants that, for all goods and / or services advertised for sale on the online platform, it-
  - 3.4.1 possesses the necessary authorization for sale of such products;
  - 3.4.2 that it has ownership of all intellectual property related to the goods and / or services and may sell same legally and the products not being illegal, banned, against public policy or dangerous for human use;
  - 3.4.3 and, to what extent is may be necessary, indemnifies the Company from any claims relating to intellectual property infringements;
- 3.5 The Vendor undertakes to furnish the Company with a proper description of the goods and / or services and to tag the goods or services under specific categories where the Vendor would like the goods and / or services to be located under on the online platform;





- 3.6 The Vendor understands that it chooses a particular subscription package which determines the value-added and other services rendered to the Vendor by the company and with the associated payment terms and service obligations and rights that are attached to the chosen package.
- 3.7 At the time of entering into this agreement, the Vendor elects a suitable package for the services that it requires and may, at any time, upgrade or downgrade its package and with such rights and obligations being amended accordingly. This package election is a variable term of this agreement and may be amended at the Vendor's choice but without having to change the full terms and conditions applicable under the terms of this Agreement;
- 3.8 The Vendor undertakes to furnish the Company with such digitally appropriate photographic material and editorial content to enable the company to properly advertise and market the company's products on the online platform. The Vendor undertakes to procure higher resolution imagery or other such requests made by the Company in relation hereto;
- 3.9 The company will create a back-end Vendor-profile whereby the Vendor may upload such imagery or content as it sees fit for purposes of advertising the Vendor's products and / or services. The Vendor undertakes not to use any language that is offensive, vulgar or transgresses any of the provisions of the Advertising Standards Authority or transgresses the provisions of the Competition Act. The Company reserves the right to remove any such imagery or content that does not comply with industry norms;
- 3.10 The Vendor acknowledges and understands that it cannot, in its editorial product description and content, attempt to:-
  - 3.10.1 Solicit separate communication with the purchaser in order to conclude a transaction outside of the online platform;
  - 3.10.2 Solicit customers from circumventing the terms and conditions of this agreement;
  - 3.10.3 Not make any representations regarding the logistics obligations undertaken by the company and not provide alternative lead times or pricing other than such as is concluded on the online platform. Any claims from customers relating to such alternative information will not be recoverable from the company;
  - 3.10.4 Circumvent any of such legislative provisions (such as the Consumer Protection Act, Act 68 of 2008) regarding product descriptions which must be full, accurate, truthful and which renders a prospective customer able to make an informed decision;
- 3.11 The Vendor acknowledges and understands that the company does not give any preference or exclusivity to any particular Vendor or goods or services and that the Vendor's product and / or services will feature alongside other similar products by other Vendor's;
- 3.12 The Vendor undertakes and warrants that products ordered through the online will be delivered to the exact standard and description as that which was ordered and not deviate by providing, at its own discretion, an alternative product other than that which was advertised;





- 3.13 The Vendor acknowledges that any disputes relating to the quality or nature of the products or any other misrepresentation of the Vendor's products or any liability associated therewith will be for the Vendor's liability and responsibility with no such liability or recourse to the Company;
- 3.14 The Vendor agrees that, during the vetting process to vet the Vendor as a desired Vendor for the online platform, the Company may request such documents as may be necessary to perform such vetting inclusive, but not limited to, company registration documents, proof of tax registration, financial information, trade history and video-evidence of the Vendor's warehousing or manufacturing capabilities. The Vendor agrees that the Company may perform such credit searches as it may deem necessary and the Vendor hereby gives proper permission or authority for the Company to perform such search;
- 3.15 The Vendor further agrees that any of the information obtained herein and utilized by the Company during the vetting process is given with the necessary permissions or authority given for this purpose in terms of the Protection of Personal Information Act, Act 4 of 2013.

## RETURNS

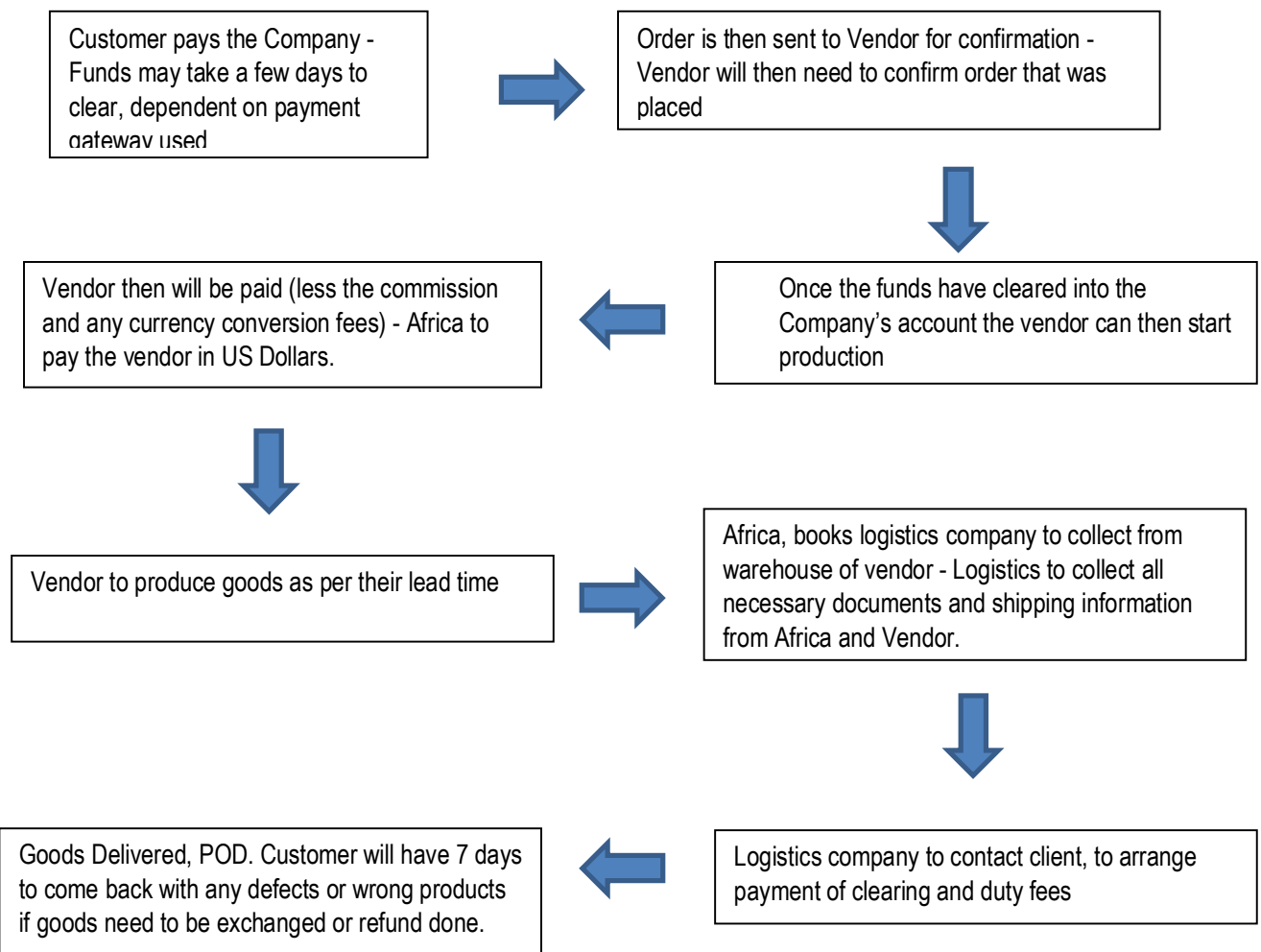
- 3.16 The company, as first line of contact with the customer, will receive a complaint or query about the Vendor's goods and / or services and will immediately contact the Vendor to make it aware of the nature of the complaint and which include, but are not limited to:-
  - 3.16.1 A defective product;
  - 3.16.2 A misrepresented or alternative product;
  - 3.16.3 Products that are not fit for the purposes that same was advertised for;
- 3.17 The Vendor must thereafter engage with the customer regarding the return of the goods and the vendor undertakes that any monetary loss resulting from returns on goods and / or services will be borne by the Vendor and further that the commission earned by the Company will not be refunded to the Vendor since the transaction was completed by the Company;
- 3.18 The Vendor undertakes to make all such arrangements regarding the return of the defective goods and / or services and bear any such costs for its own account;
- 3.19 In the event that a customer has ordered an incorrect product, the customer will be engaged with in order for the customer to return the goods and / or services to the Vendor at the customer's costs.





#### 4. PAYMENTS

- 4.1 The company processes the order as received from the customer for the Vendor's goods and / or services and, after provision of the logistics quotation to the customer, receives payment from the customer for the purchase price of the product and for the logistics;
- 4.2 The company then notifies the Vendor of the transaction and places the order with the Vendor for the ordered goods and / or services;
- 4.3 The company retains the payment from the customer until such time as the Vendor has released the goods and / or services to the logistics provider and whereafter the Company will make payment to the Vendor of the transaction sales price that accrues to the Vendor and after subtraction of the Company's commission as defined and agreed below;
- 4.4 The following flow diagram sets out the practical provisions of this paragraph:-





- 4.5 The Vendor may upload its goods and / or services the currency of their choice whereupon such price will be converted to US dollars upon a checkout from a customer. The customer will pay in US dollars and which payment will be made to the Vendor. Any conversion differences and / or associated taxes will be borne by the Vendor;
- 4.6 The Company is paid a commission based on the subscription package subscribed to by the Vendor and each transaction processed through the online platform and which amount is calculated on the purchase price of the goods and / or services that the customer pays for the Vendor's goods and / or services and which amount is levied against the Vendor by the Company by way of a tax invoice generated for each transaction;
- 4.7 Invoices rendered to the Vendor are payable within THIRTY (30) days of receipt of same and the Vendor elects as email address the email address stated in the preamble to this agreement as the email address where invoices will be received and acknowledges receipt of such invoices on the date and time that such invoice is emailed and payment is to be effected during a thirty-day cycle;
- 4.8 In the event of a Vendor not making payment as provided for above, the Vendor will be given due notice and, if payment has not been received, will be automatically downgraded to the basic, free subscription package;

## **5 INTELLECTUAL PROPERTY**

- 5.1 To the extent necessary for purposes of listing and advertising on the online platform, the Vendor gives the company the right to utilize its logos and / or other visual imagery on the online platform and to indicate its association with the Vendor;
- 5.2 The Vendor, likewise, is allowed to utilize the logo and / or provided visual imagery of the company on its website in order to indicate its association and access on the online platform during such marketing campaigns that it may engage in.

## **6 CONFIDENTIALITY PROVISIONS**

- 6.1 The parties acknowledge that by reason of its relationship and interaction in terms of this agreement, each will have access to certain information and materials concerning either party's technology and products that are confidential and of substantial value to each party, which value would be impaired if such information were disclosed to third parties.
- 6.2 The parties agree that neither will use in any way for its own account or the account of any third party, nor disclose to any third party, any such confidential information revealed to it in written or other tangible form or orally, identified as confidential, by either party without the prior written consent of the company.







- 6.3 Both parties shall take every reasonable precaution to protect the confidentiality of such information. In the event of termination of this Agreement, whether by own operation or through a breach of contract, there shall be no use or disclosure by either party of any confidential information of either of the parties;
- 6.4 This section shall not apply to any confidential information which is or becomes generally known and available in the public domain owing to the agreed publication of information on the online platform;

## **7 BREACH, TERMINATION AND CANCELLATION**

- 7.1 In the event of either party breaching a material term of this agreement, the offended party will furnish the breaching party with a Notice calling on the breaching party to remedy its breach within 7 (seven) days of such notice. Should the breaching party fail to remedy its breach, the offended party may cancel this agreement and claim damages and / or specific performance whichever relief being appropriate;
- 7.2 The Parties agree that the "successful" party in any legal proceedings will be awarded costs on the Attorney-and-client scale;
- 7.3 Ancillary to the obligations placed on the parties in the foregoing clauses and any breaches afforded by operation of law the following instances are viewed as an automatic breach by the Vendor if:-
  - 7.3.1 The Vendor consistently (at least on three separate occasions) misrepresents products, delivers defective products and generally breaches the terms contained in paragraph 3 of this agreement;
  - 7.3.2 The Vendor is unable to make available advertised or listed products on the online platform on at least three occasions;
  - 7.3.3 In the event that complaints are received that the Vendor's goods and / or services are dangerous, illegal or does not have the necessary intellectual property rights permissions to vend same, the Company may, pending proper engagement and investigation with the Vendor, immediately suspend the Vendor's trading rights on the online platform until such time as this issue has been resolved;
- 7.4 Ancillary to the obligations placed on the parties in the foregoing clauses and any breaches afforded by operation of law the following instances are viewed as an automatic breach by the company if:-
  - 7.4.1 The company fails to make payment of the purchase consideration of a transaction to the Vendor and after the completion of the process diagrammed at paragraph 4.4;
  - 7.4.2 The company fails to list goods and / or services of the Vendor after the Vendor has furnished such listing with the adequate wording and imagery to the company;
  - 7.4.3 The company fails to remove goods and / or services of the Vendor after the Vendor has notified the Company that same must be removed and only in such event as the Vendor has not loaded same up itself through the Vendor back-end of the online platform;





## 8 MISCELLANEOUS AND GENERAL LEGAL PROVISIONS

### 8.1 Addresses and Notices:

- 8.1.1 For the purpose of this agreement, including the giving of notices in terms hereof and the serving of legal process, the parties choose *domicilium citandi et executandi* ("*domicilium*") the addresses and particulars as furnished in the preamble to this agreement.
- 8.1.2 A party may at any time change its *domicilium* by notice in writing. Provided that the new *domicilium* consists of, or includes, a physical address at which process can be served and not a mere postbox;
- 8.1.3 Any notice given in connection with this agreement may be delivered by hand; or be sent by prepaid registered post; or be sent by email to the chosen email address details at the preamble of this agreement. Any notice or process delivered on any party in connection with any matter or subject arising out of this agreement or any notice shall be deemed to have been delivered if handed to any responsible person at the *domicilium* chosen by any party and it shall not be necessary to hand such process or notice to any party personally.

8.2 **Variation and Cancellation:** No agreement varying, adding to, deleting from or cancelling this agreement shall be effective unless reduced to writing and signed by or on behalf of the parties. It is recorded that there exists no collateral and/or other agreements and that this is the sole agreement entered into by and between the parties.

8.3 **Assignment / Cession:** The parties may not assign, cede or transfer this Agreement or any of its rights and obligations under this Agreement without the prior written consent of the other party, which shall not be unreasonably withheld.

### 8.4 Property Rights:

- 8.4.1 The parties agree that each party owns all its own rights, titles and interest in any intellectual property and that, other than the terms of this agreement, neither party will gain any interest or right in any such property rights in the other company and which may only be used in terms of this agreement;
- 8.4.2 The parties further agree that this agreement does not confer any right or agency, joint venture or other joint business venture in each entity and that each entity only bears the obligations and rights conferred to them in terms of this agreement;

8.5 **Severability:** If any provision(s) of this Agreement shall be held invalid, illegal or unenforceable by a court of competent jurisdiction, the remainder of the Agreement shall be valid and enforceable and the parties shall





negotiate in good faith a substitute, valid and enforceable provision which most nearly effects the parties' intent in entering into this Agreement.

8.6 **Entire Agreement:** This Agreement and the exhibits hereto represent and constitute the entire agreement between the parties, and supersedes and merges all prior negotiations, agreements and understandings, oral or written, with respect to any and all matters between the Representative and Company.

8.7 **Applicable law:** The parties agree that the validity, interpretation, termination, enforcement and execution of the terms of this agreement will be governed by the Laws of the Republic of South-Africa;

## 9 FORCE MAJEURE

9.1 If either party is prevented from performing any of its obligations in terms of this agreement as a result of any conditions of *force majeure* or of any event beyond its reasonable control whether or not foreseeable, including, but not limited to the following:-

9.1.1 Acts of God which includes natural disasters;

9.1.2 Riots, strikes, insurrection, industrial action which includes lockouts, transport and delivery delays as a consequence thereof;

9.1.3 Warfare or conditions and legislation preparing the country for war;

9.1.4 Fire;

9.1.5 Pandemics, diseases or prevailing health and safety legislation that effect the grouping of people, procurement of products or services and legislative efforts at curbing any such situation that renders performance impossible;

9.2 the party prohibited or for whom it is impossible to perform shall, at the first instance of having knowledge of the impossibility, give written notification to the other party specifying such impossibility of performance. The parties will attempt to distinguish between impossibility of performance and situations where performance would be merely delayed or hindered and attempt to mitigate the situation accordingly.

## 10 SIGNATORIES

10.1 Each of the signatories to this agreement warrants that he or she is duly authorised to enter into this Agreement and, where necessary, a special resolution has been passed by the contracting entity authorizing such signatory to enter into this agreement;

10.2 This agreement becomes of full force and effect when signed by the last party to append their signature hereto;





10.3 The parties further agree and acknowledge that the signatures below, where appended digitally each constitutes the signing party's acceptance of the terms and conditions of this agreement as contemplated in terms of Section 13(3)(a) and 13(5)(b) of the Electronic Communications and Transactions Act, Act 25 of 2002 and that the digital signatures comply with the provisions of Section 13(1) of Part 1, Chapter III of the Act.

Signed at \_\_\_\_\_ on \_\_\_\_\_ 2021.

\_\_\_\_\_

**FOR THE COMPANY**

Signed at \_\_\_\_\_ on \_\_\_\_\_ 2021.

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**FOR THE VENDOR**

