

STANDARD TERMS AND CONDITIONS OF THE USE OF FEVERTREE FINANCE CREDIT BY THE MERCHANT

1. Interpretation

In this agreement, clause headings are for convenience and shall not be used in its interpretation and, unless the context clearly indicates a contrary intention:

- 1.1 An expression which denotes any one gender includes the other two genders; the singular includes the plural and *vice versa*; and natural persons include created entities (corporate or unincorporated) and the state and *vice versa*;
- 1.2 The following terms shall have the meanings assigned to them hereunder and cognate expressions shall have corresponding meanings, namely –

1.2.1	“Act”	the National Credit Act 34 of 2005, its regulations and other subordinate measures in terms of the Act;
1.2.2	“the/this agreement”	these standard terms and conditions together with the covering agreement to which these standard terms and conditions are attached;
1.2.3	“business day”	any day which is not a Saturday, Sunday or official public holiday in the RSA;
1.2.4	“Credit Provider”	means FeverTree Finance.
1.2.5	“debt”	the claim of the Credit Provider against a FeverTree Finance account holder pursuant to a FeverTree Finance account;
1.2.6	“FeverTree”	FeverTree Finance Proprietary Limited (Registration No. 1998/023910/07) or the Credit Provider;
1.2.7	“the Merchant”	Means the retail or online stores owned and operated by the legal entity, whose details appear on the first or second page of the merchant agreement;
1.2.8	“FeverTree Finance Credit” or	the facility whereby the Credit Provider provides credit to a

	"FeverTree Finance Account"	consumer and which FeverTree Finance account is opened and operated in the name of the FeverTree Finance account holder;
1.2.9	"FeverTree Finance account holder"	a person in whose name a FeverTree Finance account is opened and to whom credit is issued ;
1.2.10	"FeverTree Finance account terms"	the standard terms and conditions governing the relationship between the Credit Provider and the FeverTree Finance account holder in respect of the FeverTree Finance account;
1.2.11	"FeverTree Finance cards"	the FeverTree Finance card which may be issued by the Credit Provider to a FeverTree Finance account holder pursuant to an application approved by the Credit Provider to effect payment instructions to the Credit Provider on the FeverTree Finance account;
1.2.12	"intellectual property"	all intellectual property rights including the names, designs, trademarks and logos used by the Credit Provider;
1.2.13	"Merchant outlets"	the outlets of the Merchant in the RSA through which the Merchant supplies the services;
1.2.14	"payment instruction"	an instruction by an FeverTree Finance account holder to the Credit Provider by means of the FeverTree Finance account or card from time to time;
1.2.15	"point of sale procedures"	the point of sale procedures set out in this agreement, with which the Merchant is to comply, which procedures include the correct identification verification of the relevant FeverTree Finance account holder and the procuring

		of the signature by such FeverTree Finance account holder of the relevant sale and credit documentation required in terms of such procedures;
1.2.16	"point of sale application"	the electronic application used at the point of sale which is able to perform transaction posting, obtain credit authorisation for a transaction and manage account holder information, which application will be linked by electronic internet interface to the Credit Provider. Such applications may be updated from time to time;
1.2.17	"purchase transaction"	a purchase and sales transaction between the Merchant and the FeverTree Finance account holder in terms of which the Merchant provides products or services to the FeverTree Finance account holder;
1.2.18	"receipt"	the point of sale generated receipt;
1.2.19	"RSA"	the Republic of South Africa;
1.2.20	"VAT"	Value-Added Tax levied in terms of the VAT Act 89 of 1991, as amended.

- 1.3 Any reference to any statute, regulation or other legislation shall be a reference to that statute, regulation or other legislation as at the commencement date, and as amended or substituted from time to time.
- 1.4 Any term defined in the covering agreement or anywhere else other than this clause, that term shall bear the meaning ascribed to it in that clause wherever it is used in this agreement.
- 1.5 Where any number of days is to be calculated from a particular day, such number shall be calculated as excluding such particular day and commencing on the next day. If the last day of such number so calculated falls on a day which is not a business day, the last day shall be deemed to be the next succeeding day which is a business day.
- 1.6 References to day/s, month/s or year/s shall be construed as calendar day/s, month/s or year/s.

- 1.7 The rule of construction that the contract shall be interpreted against the party responsible for the drafting or preparation of the agreement, shall not apply.

2. Introduction

FeverTree Finance ("Credit Provider") will provide customers of the Merchant with a facility whereby credit is extended under the name of FeverTree Finance. The Merchant's customers will in turn use this credit as a means of payment to settle the Merchant. Through this process the Credit Provider will become a debtor of the Merchant until the Credit Provider settles the Merchant on behalf of the Merchant's customer. Once the original transaction has been effected, the relationship becomes a direct relationship between the Credit Provider and the customer of the Merchant. The Credit Provider will be responsible for collecting the amounts owed under the credit agreement with each and every customer.

3. Purchase transactions

- 3.1 The FeverTree Finance account shall, subject to the FeverTree Finance account terms, enable the FeverTree Finance account holder to conclude a purchase transaction with the Merchant.
- 3.2 Subject to the terms of this agreement:
- 3.2.1 The Merchant shall conclude and remain solely responsible for the purchase transaction;
 - 3.2.2 The Credit Provider shall remain solely responsible for the FeverTree Finance accounts and the FeverTree Finance account holder's obligations;
 - 3.2.3 The Credit Provider is not a party to the purchase transaction and the Merchant is not a party to the FeverTree Finance account or the FeverTree Finance account holder's terms and conditions;
 - 3.2.4 All matters regarding outstanding debts on the FeverTree Finance accounts, including the collection thereof, are the sole responsibility of the Credit Provider;
 - 3.2.5 The Credit Provider shall ensure that monthly statements are issued on request showing all transactions performed on the FeverTree Finance account up to the date of such statement, which statement shall include the total amount payable and the minimum amount payable on or before the due date for payment specified in the statement;
 - 3.2.6 The FeverTree Finance account holder shall make monthly payments to the Credit Provider in the amount indicated on the monthly statement referred to in clause 4.2.5 via debit order and on the date indicated in such statement, in accordance with the FeverTree Finance account terms and conditions.
- 3.3 Subject to clauses 6, 9 and 10, the Credit Provider will settle the Merchant the amount payable, as defined in clause 6.1.3

4. Point of sale application

- 4.1 It is recorded that the Merchant may make use of the following point of sale software for the processing of credit transactions with an account holder.

- 5.1.1 the current point of sale computer software used by the Merchant, only if the Credit Provider has integrated its credit application directly into the Merchants operating system so as to receive real time data transfer to the sole satisfaction of the Credit Provider; or
 - 5.1.2 the web based software application developed by the Credit Provider, which will allow the Merchant to process credit transactions in real-time through the internet via the Credit Providers web application software; or
 - 5.1.3 should the Credit Provider decide to implement card terminals, the Merchant shall agree to utilise point of sale terminals supplied or prescribed by the Credit Provider from time to time which shall be installed and maintained by a third party service provider ("service provider"). The service provider maintains an electronic connection with FeverTree Finance so that, upon the Merchant's installation of point of sale terminals, the Merchant's outlets will be able to obtain authorisation for and process the purchase transactions.
- 4.2 The Merchant undertakes that it shall ensure that at least one point of sale solution is installed in each of the Merchant's outlets prior to the commencement date and shall do all things and sign all reasonable documents required by the Credit Provider or the service provider to ensure that the Merchant complies timeously with the provisions of this paragraph. The Merchant acknowledges that, unless otherwise specifically agreed in writing with the Credit Provider, its contractual relationship in respect of the acquisition, installation, use, insurance and maintenance of the point of sale terminals/solutions shall be with the service provider and shall completely exclude FeverTree Finance.
- 4.3 The Merchant shall be responsible for the payment of any charges relating to the installation, maintenance and the connections required for the proper operation of the point of sale terminals or solutions.

5. Point of sale procedures

- 5.1 The Merchant undertakes to supply its products and services to FeverTree Finance account holders at prices not greater than the Merchant's applicable prices from time to time which are charged to any of its cash customers who do not use FeverTree Finance Credit to effect payment therefore.
- 5.2 The Merchant shall not refuse to provide products or services to any customer or potential customer of the Merchant merely because such customer or potential customer wishes to effect payment using FeverTree Finance Credit.
- 5.3 The Merchant shall obtain authorisation for each transaction by using the point of sale application to effect a credit transaction and shall comply with the point of sale procedures.
- 5.4 The Merchant shall retain a copy of each receipt signed by the FeverTree Finance account holder for a period of five years from the date of the relevant credit transaction.
- 5.5 The Credit Provider shall be entitled to refuse authorisation for any new or existing credit customer transaction in its sole discretion.

6. Consideration

- 6.1 For the purposes of this clause:

6.1.1 “**purchase amount**” means the monetary amount reflected in each payment instruction transmitted to FeverTree by FeverTree Finance account holders;

6.1.2 “**weekly aggregate**” means the total aggregate of the purchase amounts at the end of each relevant FeverTree weekly payment run;

6.1.3 “**amount payable**” means the weekly aggregate amount equal to the sum of account holders transactional value (purchase amounts) with the Merchant (inclusive of vat);

6.1.4 “**discount**” means the amount calculated in accordance with the below formula:

$$A = B \times C$$

where:

A = the discount to be calculated, inclusive of vat;

B = the settlement discount specified in the merchant agreement;

C = the purchase amount (value) of the transaction concluded with the Merchant by the account holder inclusive of vat.

6.2 The Credit Provider shall pay the aggregate of weekly purchase amounts payable in terms of 6.1.3 to the Merchant coinciding with each FeverTree Finance weekly payment run.

6.3 The business day following the payment in terms of 6.2, the Credit Provider shall be entitled to recover the discount under 6.1.4 from the Merchant’s account via debit order.

6.4 FeverTree Finance shall review the formula in 6.1 at any time on or after the first anniversary of the commencement date and shall notify the Merchant in writing of any adjustment as agreed by both parties to that formula, which shall immediately become effective in respect of all purchase transactions performed after the date on which such notice is given.

7. Debiting of merchant’s account

7.1 FeverTree shall be entitled to recover from the Merchant and debit the Merchant’s account with:

7.1.1 the value of the discount in terms of 6.1.4;

7.1.2 the value of reversals of invalid receipts;

7.1.3 the amount of any refund due to a FeverTree Finance account holder and not rectified by the Merchant;

7.1.4 any overpayments by FeverTree Finance arising from clerical or electronic errors by either party;

7.1.5 the value of disputed transactions as raised by FeverTree Finance account holders with FeverTree Finance and/or Credit Provider;

7.1.6 the value of any invalid transactions as referred to in 8;

7.1.7 the value of any fraudulent transactions as referred to in 9;

7.1.8 the total value of sales values lost as a consequence of the Merchant’s failure to provide properly reconstructed documentation within seven days of being requested to do so by FeverTree.

- 7.2 Upon FeverTree being entitled to recover any of the aforesaid amounts and in order to enable FeverTree to carry out the collection, the Merchant hereby authorises FeverTree to set-off the relevant amount owing against payments FeverTree may owe to the Merchant from time to time under the Merchant Agreement and these terms and conditions, alternatively FeverTree shall be entitled to issue and deliver payment instructions to the Merchant's bankers for collection against the Merchant's nominated account specified in the Merchant Agreement. The payment instruction so authorised:
- 7.2.1 relate to all amounts due, or which may become due, by the Merchant in respect of its obligations under the Merchant Agreement and/or these terms and conditions;
- 7.2.2 must be issued and delivered on the 1st day of the very next month save that if the aforesaid date falls on a Saturday, Sunday or recognised South African public holiday, the collection date will automatically fall on the preceding business day, or in the event that the aforesaid is not practically possible, the next business day;
- 7.2.3 if there are insufficient funds in Merchant's account to meet the obligation, FeverTree are entitled to track the nominated account and re-present the instruction for payment as soon as sufficient funds are available in the nominated account;
- 7.2.4 the cancellation of any particular debit order authorisation shall not impact the validity of this authority and mandate in relation to the remainder of the debit order authorisations, nor the validity of these terms and conditions nor the Merchant Agreement; and
- 7.2.5 the Merchant acknowledges that all payment instructions issued by FeverTree will be treated by its bank as if the instructions had been issued by the Merchant personally. The Merchant also understands that it cannot reclaim amounts which have been withdrawn from its account (paid) in terms of this authority and mandate if such amounts were legally owing to FeverTree. The Merchant acknowledges that this authority may be ceded or assigned to a third party if the relevant agreement is also ceded or assigned to that third party.
- 7.3 The Merchant undertakes to immediately notify FeverTree in writing of any changes in its bank account details.
- 7.4 The Merchant shall raise any query regarding the correctness or any other aspect of any entry on the Merchant's account, within 7 business days, failing which the Merchant shall forfeit any claim it may have against FeverTree in respect of such entry.

8. Invalid transactions

- 8.1 Payments of amounts payable to the Merchant arising from any purchase transaction will, at FeverTree's reasonable election, be or become invalid if -
- 8.1.1 the purchase transaction giving rise to the payment instruction is illegal;
- 8.1.2 the signature of the FeverTree Finance account holder does not appear on the receipt;
- 8.1.3 the receipt is materially incomplete;
- 8.1.4 the receipt was not processed on the point of sale solution/terminal supplied or approved by the Credit Provider as provided for in 5;

8.1.5 prior to, at the time of or after the transaction, the Merchant fails to comply with any of its obligations in terms of this agreement (which include, inter alia, the requirement that the Merchant shall verify the identity of the customer) and the point of sale procedures.

9. Fraudulent transactions

- 9.1 **“Fraudulent transactions”** means all transactions which in terms of the common law or statute could constitute fraud and will include any purchase transaction arising from the use of the FeverTree Finance Credit facility by a person other than the authorised FeverTree Finance account holder.
- 9.2 The Merchant agrees that it shall be responsible for the actions of its employees at all times.
- 9.3 The Merchant shall notify FeverTree immediately if it becomes aware of the unauthorised use of any FeverTree Finance Credit and FeverTree and the Merchant undertake to use all reasonable steps in conjunction with each other to minimise losses attributed to such occurrence.
- 9.4 In the event of an invalid or fraudulent transaction (referred to in 8 and 9.1) FeverTree shall have no obligation or liability to make payment to the Merchant of the amounts referred to in 6, and the Merchant shall have no claim against FeverTree in respect of such transactions. FeverTree shall accordingly be entitled to recover from the Merchant, forthwith upon demand therefore, any amount which may have been paid to the Merchant in respect of any fraudulent or invalid transaction and the Merchant shall pay the amount thereof to FeverTree in cash without set-off or deduction of any nature whatever.
- 9.5 Notwithstanding anything to the contrary in this agreement and without limitation of 9.4, the Merchant indemnifies FeverTree and the Credit Provider against any claim, loss, liability, damage, cost (including legal costs on the scale as between attorney and own client and any additional legal costs) or expense of any nature whatever which the Credit Provider may suffer or incur as a result of or in connection with an invalid or fraudulent transaction.

10. Refunds

- 10.1 If the Merchant agrees to furnish a refund, in whole or in part, to the FeverTree Finance account holder for any purchase transaction, the Merchant shall:
- 10.1.1 complete a point of sale refund transaction;
 - 10.1.2 not make a cash refund to the FeverTree Finance account holder;
 - 10.1.3 obtain the signature of the FeverTree Finance account holder on the receipt and provide the FeverTree Finance account holder with a copy of such receipt;
 - 10.1.4 retain a copy of the receipt slip for a period of five years from the date of the relevant credit transaction.

11. Marketing and intellectual property

- 11.1 The Merchant shall not publish any marketing and/or promotional material which refers to the FeverTree Finance product unless such material has first been approved by FeverTree in writing.
- 11.2 The Merchant shall not be entitled to use the intellectual property of the Credit Provider without the prior written approval of the Credit Provider for all aspects of such use, including format and context in

which the intellectual property is to be used. If the Credit Provider so requires, in order to grant any such approval, the Merchant shall enter into a registered user agreements with the Credit Provider governing the use of the intellectual property and in that event the Merchant shall bear all costs associated with the registered user agreements.

- 11.3 The Merchant shall not acquire any right, title or interest in and to the intellectual property of the Credit Provider. The Merchant undertakes not to perform any act which is likely to injure the reputation or goodwill attaching to intellectual property of the Credit Provider or which would prejudice the Credit Provider's rights in relation to such intellectual property.

12. Confidentiality

- 12.1 Subject to 12.2 and 12.3 neither party ("**receiving party**") shall, at any time after the conclusion of this agreement, for the duration of this agreement and after the cancellation or termination of this agreement –

12.1.1 disclose to any person or use in any manner whatever the confidential information; or

12.1.2 disclose to any person the existence or contents of this agreement; or

12.1.3 retain the original or any copies of the confidential records (all of which shall be surrendered to the owner) if the owner requests their surrender to it.

- 12.2 Notwithstanding 12.1 a party may disclose the confidential information and the existence and contents of this agreement –

12.2.1 to the extent required by any rules of any stock exchange by which that party, or any other company in the group to which that party belongs, is bound; provided further that no such disclosure shall be made unless the other party has first given its written approval for the form thereof, which approval may not be unreasonably withheld or delayed; provided that a party shall not be obliged so to obtain the consent of the other if such disclosure is required before the approval can reasonably be obtained but the disclosing party shall in these circumstances promptly notify the other party of the full details of such disclosure, including the reasons why time did not permit such consent to be obtained;

12.2.2 to the extent required by law (other than in terms of a contractual obligation of the receiving party);

12.2.3 to, and permit the use thereof by its employees, representatives and professional advisers to the extent strictly necessary for the purpose of implementing or enforcing this agreement or obtaining professional advice or conducting its business, it being specifically agreed that any disclosure or use by any such employee, representative or adviser of such confidential or other information for any other purpose shall constitute a breach of this paragraph by the receiving party.

- 12.3 All parties shall procure that its employees, representatives and professional advisers referred to in 12.2.3 do not breach this clause 12.

- 12.4 "**Confidential information**" of a party shall mean any information relating to that party or its affairs which is disclosed by that party to the receiving party or otherwise received by the receiving party (whether prior to, during, or after the conclusion of this agreement) in terms of this agreement or

otherwise in connection with this agreement. "**Confidential records**" shall mean any records of any nature whatever (including documents, diagrams and data which have been created or stored in any medium, irrespective of who created such records) which contain any confidential information and shall be deemed to be owned by the party whose confidential information is contained therein.

13. Breach

13.1 Should either party breach any provision of this agreement and fail to remedy such breach within thirty days after receiving written notice requiring such remedy, then (irrespective of the materiality of such breach or provision) the other party shall be entitled, without prejudice to its other rights in law including any right to claim damages, to cancel this agreement or to claim immediate specific performance of all of the defaulting party's obligations whether or not otherwise then due for performance. No such cancellation shall affect any rights and obligations which may have accrued in terms of this agreement prior to the date of such cancellation.

13.2 On termination of this agreement for any reason whatsoever, or cancellation in terms of 13.1, the Merchant shall:

13.2.1 notwithstanding such termination or cancellation, continue to retain all receipts referred to in 5.4 for a period of five years from the date of the relevant purchase transaction and shall submit copies of the receipts to the Credit Provider within seven days from the date of request by the Credit Provider for such documents.

14. Domicilium and notices

14.1 The parties choose *domicilium citandi et executandi* ("**domicilium**") for all purposes relating to this agreement, including the giving of any notice, the payment of any sum, the serving of any process, as follows –

14.1.1 **Credit Provider's physical address:**

FeverTree Finance (Pty) Ltd
5th Floor Oasim North
Havelock Street
Central
Port Elizabeth
6001

marked for the attention of: **Directors**

14.1.2 **the Merchant's physical address:**

As per the merchant agreement submitted to FeverTree Finance and marked for the attention of the **Director**.

14.2 Either party shall be entitled from time to time, by giving written notice to the other, to vary its physical domicilium to any other physical address (not being a post office box or poste restante) within the RSA, to vary its postal domicilium to any other postal address within the RSA and to vary its facsimile domicilium to any other facsimile number.

- 14.3 Any notice given or payment made by either party to the other ("**addressee**") shall be delivered by hand between the hours of 09:00 and 17:00 on any business day to the addressee's physical domicile for the time being and shall be deemed to have been received by the addressee at the time of delivery.
- 14.4 Any notice given by either party to the other by way of facsimile shall be deemed to have been received by the addressee on the date of transmission of the facsimile, provided such day is a business day, failing which it will be deemed to be received on the next succeeding business day.
- 14.5 This paragraph shall not operate so as to invalidate the giving or receipt of any written notice which is actually received by the addressee other than by a method referred to in this 14.
- 14.6 Any notice in terms of or in connection with this agreement shall be valid and effective only if in writing and if received or deemed to be received by the addressee.

15. Privacy

- 15.1 Personal details of FeverTree Finance account holders shall be maintained by the Credit Provider in a database ("database") in compliance with the provisions of the Protection of Personal Information Act. The Merchant acknowledges that the database containing details of the FeverTree Finance account holders is the sole and exclusive property of the Credit Provider.
- 15.2 The Credit Provider may prescribe requirements ("privacy measures") to which the Merchant must adhere in respect of the database, provided such privacy measures are reasonable and aimed at ensuring compliance with legal requirements on the part of the Credit Provider.
- 15.3 Each party shall remain solely responsible for ensuring compliance of their operations, practices and procedures in respect of the database.

The provisions of this clause 15 shall survive the termination of this agreement.

16. General

- 16.1 This agreement constitutes the sole record of the agreement between the parties in relation to the subject matter hereof. No party shall be bound by any express or implied term, representation, warranty, promise or the like not recorded herein. This agreement supersedes and replaces all prior commitments, undertakings or representations, whether oral or written, between the parties in respect of the subject matter hereof.
- 16.2 No addition to, variation, novation or agreed cancellation of any provision of this agreement shall be binding upon the parties unless reduced to writing and signed by means of non-electronic, handwritten signatures by or on behalf of the parties. For the purposes of this clause "signed" means a hand-written signature, excluding any signature appended by electronic communication. "Electronic communication" has the meaning assigned to it in the Electronic Communications and Transactions Act 25 of 2002.
- 16.3 No indulgence or extension of time which any party may grant to the other shall constitute a waiver of or, whether by estoppel or otherwise, limit any of the existing or future rights of the grantor in terms hereof, save in the event and to the extent that the grantor has signed a written document expressly waiving or limiting such right.

- 16.4 Without prejudice to any other provision of this agreement, any successor-in-title, including any executor, heir, business rescue practitioner liquidator, judicial manager, curator or trustee, of any party shall be bound by this agreement.
- 16.5 Nothing in this agreement shall constitute or be deemed to constitute any relationship or partnership or joint venture between the parties.
- 16.6 The parties undertake to co-operate with each other in order to give effect to the terms of this agreement.
- 16.7 The signature of any party of a counterpart of this agreement shall be as effective as if that party had signed the same document as all of the other parties.
- 16.8 This agreement shall be interpreted and governed in all respects by the relevant laws of the Republic of South Africa.