

# The Rules of Product of the Year 2018

## Article 1

### Interpretation

Application Form as set out in Article 3.

Article any article in these Rules.

Documents signed copies of both the Rules and the Application Form (digital or paper).

Finalists as set out in Article 3.4.1.

Licence as defined in Article 4.1.

Licence Start Date as defined in Article 4.1.

Licence Period as defined in Article 4.1

Organiser Product of the Year South Africa (PTY) Ltd a company incorporated in South Africa and registered office at Silverstream Office Park, 10 Muswell Road, Bryanston, 2021.

Product or Products as defined in article 2.2.

Programme the marketing programme operated by the Organiser known as the "Voted – Product of the Year" programme as more fully described in these Rules.

Programme Year the year referred to in the title of a Programme (for example, the Programme Year for "Voted – Product of the Year 2018" will be 2018.

Quarter each consecutive period of three calendar months, with the first Quarter commencing on the

Licence Start Date.

Signatory the individual who signs these Rules either In his own capacity or on behalf of another upon whose

behalf he is authorised to act.

Total Expenditure as defined in Article 5.4.

Trade Marks the name logo, devices and get up relating to "Voted – Product of the Year" or any of them. You either the Signatory or, where the Signatory signs these Rules on behalf of a person upon whose behalf he is authorised to sign, such person. Yours will be interpreted accordingly.

**Term**  
1.2 The Signatory, by signing a copy of these rules (either in his own capacity or on behalf of a person upon whose behalf he is authorised to act), will create an agreement between You and the Organiser which will come into force on the date the rules are signed and which will continue until it is terminated in accordance with Articles 5.2 or 5.3.

## Article 2

### The Programme

2.1 You acknowledge that the Programme is an innovative, proprietary, annual marketing programme owned and operated by the Organiser which is open, subject to these rules, to new Products launched in South Africa.

### Products

2.2 The Organiser intends that national brand products of the type typically sold and widely available in supermarkets, grocers, pharmacies, and other similar retail stores may be entered by You into the Programme (**Products**). Examples of Products, without limitation, include foods; snacks; beverages; home care; personal care; health; service products; technology; banking and beauty Products; and other non food items.

### Timing

2.3 Any new Product of Yours that is first sold by or on behalf of You to consumers in South Africa between 1 January, 2016 and 31 December 2017 may be entered by You, in accordance with these rules, into the Programme. In each subsequent year, the relevant period will begin on 1 January of the year prior to the Programme Year and end on 31 December of the Programme Year.

### Categories

2.4 Products will be classified by the Organiser at its absolute discretion into categories which, where possible and subject to the discretion of the Organiser, will consist of a minimum of 2 products. The Organiser reserves the absolute right to amend, add or withdraw one or more categories, depending, amongst other things, on the nature and number of applications received, and to assign Products to the category it deems appropriate.

### Multiple entries

2.5 You may enter Products in the Programme in different categories. In the case of substantially similar Products, or the same Product sold in different sizes, You may enter only one Product in any category in any Programme Year. However, so long as the Products are different in some significant manner, You may enter more than one Product in the same category. The Organiser will have absolute discretion to accept a Product into the Programme or into any particular category, to assign Products to categories and to determine if Products that You submit are sufficiently different to warrant multiple entries in a category.

## Article 3

### Application

3.1 Completed Application Forms and full support materials must be sent by You at the latest by 31st August 2017 to:

www.productoftheyear.co.za or to the Organiser at Silverstream Office Park, 10 Muswell Road, Bryanston, 2021.

Time is of the essence. The Organiser will have the right to reject (without giving reasons) any Application Form submitted.

3.2 You acknowledge that by submitting a completed Entry Form You commit Yourself to the whole Programme and in particular to the payment of any fees that become due under Articles 5.2, 5.3 and 5.4. For the avoidance of doubt, You agree to pay these fees to the Organiser and you cannot withdraw from the Programme in the event that a Product of Yours is nominated as a Finalist or a Product of Yours is "Voted – Product of the Year".

3.3 The Organiser agrees that, except as otherwise provided in Article 6.3, all information and documents submitted by You will be treated by the Organiser as confidential and will not be disclosed or published by the Organiser without Your consent, except as may be required by law or any regulatory authority. Application forms submitted by You will be kept by the Organiser and will be dealt with by the Organiser as it sees fit. If You specifically request for Your application form to be returned to You then the Organiser will not do so before the end of March of the year following the Programme Year.

### Procedure to determine winners

3.4 The procedure to be adopted by the Organiser to choose finalists is in two stages and is as follows (subject to any changes that the Organiser may in its absolute discretion make and notify to You):

### Selection of finalists

3.4.1 a panel selected by the Organiser, including representatives from the retail trade, design, industry and advertising, will review all of the entries received and accepted under Article 3.2. The selection criteria and procedures of the panel will be determined by the Organiser and will include, without limitation, the innovative character of the Product (matters such as formula, packaging and recipe). The panel will select from all application forms submitted (and accepted by the Organiser) a number of entrants to be "finalists". In the interest of time this step may be waived with all entrants proceeding to the consumer vote stage. There will be no fewer than two in each category; and

### Consumer vote

3.4.2 the Product selected to be "Voted – Product of the Year" in each category will be determined from among the finalists selected under Article 3.4.1 in that category by the vote of a panel of consumers administered by the Organiser and Nielsen South Africa. The panel will be reasonably representative of the population of South Africa (as determined by the Organiser) and will consist of not less than 5,000 households. A first rating will be based on the vote expressed by the whole of this panel of consumer households. A second rating will be based on the vote expressed by those consumer households within the panel

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which have purchased one or more of the Products in the particular category. The Product selected to be "Voted – Product of the Year" in each category will be determined by the Organiser using a proprietary and confidential formula of the Organiser reflecting both ratings.

## **Article 4 Organiser's rights in the Trade Marks**

**4.1** You acknowledge that the Trade Marks are the exclusive trade marks of the Organiser or its licensors. You agree not to apply for or obtain registration of the Trade Marks for any goods or services in any jurisdiction, nor use the Trade Marks (or anything confusingly similar to the Trade Marks) as a company, business, trade or Product name in any jurisdiction.

## **Winning Product Trade Marks licence**

**4.2.** Subject to You making the payments set out in Article 5, if Your Product is selected under Article 3.4.2 as "Voted – Product of the Year" in a particular category You will be granted a limited, revocable, non transferable, non assignable licence (**Licence**) to use the Trade Marks only in South Africa subject to the following rules.

**4.2.1** The duration of such Licence is limited to the period commencing on the date on which the winners for that Programme Year are announced (**Licence Start Date**) to 31 December of the following calendar year (**Licence End Date**), time being of the essence.

**4.2.2** You will obtain the Organiser's approval for all uses of the Trade Marks and will comply at all times with the reasonable instructions and the directions of the Organiser in relation to Your use of the Trade Marks under the Licence. The Trade Marks may only be used in the form, dimensions and graphic representation approved, in each instance, in writing by the Organiser in its sole discretion.

**4.2.3** You may use the Trade Marks only on or in relation to the winning Product and that Product alone. Unless otherwise approved in each instance by the Organiser You may not use the Trade Marks on packaging or advertising which includes products other than the Winning Product.

**4.2.4** The Trade Marks may only be used in advertising aimed primarily within South Africa, and on Products which are intended for sale within South Africa.

**4.2.5** The Trade Marks may only be used in relation to the winning Product in the same form and composition as the Product is presented in the application form submitted in respect of it under Article 3.2,

**4.2.6** Every use of the Trade Marks will be accompanied by a reference to the Programme Year and category for which the Product won.

**4.2.7** The Organiser will have the right, in its absolute discretion, to permit the use of the Trade Marks for groupings of some or all of the winning Products for the purpose of promotions directly or indirectly referring to "Products of the Year", subject to Articles 5.4 and 5.5.

## **Termination of use**

**4.3** You undertake to monitor use of the Trade Marks under the Licence to ensure that it is no longer used on any product or advertising after the Licence End Date, time being of the essence. In particular, but without limitation, You will stop manufacturing or ordering Products and packaging incorporating the Trade Mark sufficiently early so that all Products and packaging incorporating the Trade Marks are reasonably likely to be sold before the Licence End Date . If the Trade Marks do appear after Licence End Date on

Products in stores for retail sale, You will be liable to pay the Organiser damages.

## **Limitations on use/right to terminate**

**4.4** Breach of Article 4 will give the Organiser, in its sole discretion, the right to terminate immediately and without notice the Licence granted to You under Article 4.2 without any obligation to refund any fees paid or payable pursuant to Article 5.

## **Article 5 Fees**

**5.1** There will be no fee for submitting an Application.

**5.2** You shall pay the Organiser a sum of ZAR199,500 (One Hundred and Ninety nine Thousand, five hundred Rands) in respect of each Product of Yours that is voted "Voted – Product of the Year" in a category in consideration for the grant of the Licence under Article 4.1. Payment is due within ten days of receipt of invoice. Unless otherwise agreed with the Organiser, You will not be allowed to make use of the Logo prior to receipt of such payment. Failure to make such payment may, at the discretion of the Organiser, result in all Your Products being disqualified from the Programme and, upon the Organiser giving You written notice, this agreement being terminated immediately. Your liability to make any payment due will remain.

**5.3** There is no fee payable should your product not be voted "Voted Product of the Year."

**5.4** You agree that You will not, and You will not take steps, purport or seek to, enter into any understanding, concerted practice, arrangement or agreement relating to the joint promotion, advertising, or marketing of any Product of Yours that has been selected as a "Voted – Product of the Year" with one or more other Products that have been selected as " Voted – Product of the Year" using the Logo (whether such Products are Yours or are those of a third party) with, or relating to, any seller of such Products (including, without limitation, any wholesaler, grocer, supermarket, or distributor).

## **Article 6 Force majeure**

**6.1** The Organiser will not be liable for failure to perform any obligation under these rules to the extent that it is caused due to forces beyond its control.

## **Acceptance of rules**

**6.2** Participating in the Programme involves full and entire acceptance of these rules. You must accept these rules by signing them personally or by having an authorised signatory sign them.

## **Agreement to use of name**

**6.3** If Your Product or Products are selected as finalists You permit the Organiser to give out Your name, address and a description of the finalist Products together with a qualitative analysis of the results of the consumer panel survey conducted by or on behalf of the Organiser under Article 3.4.2 as part of the publication and promotion of the Programme.

## **Interpretation by the Organiser**

**6.4** Any question regarding the interpretation or application of these rules or other question relating to the Programme will be settled solely by the Organiser, in its discretion.

## **Construction**

**6.5** Whenever the singular number is used in these rules and when required by the context, the same will include the plural and vice versa, and the masculine gender shall include the feminine and neuter genders and vice versa.

## **Headings**

**6.6** The headings in these rules are for convenience only

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and are in no way intended to describe, interpret, define, or limit the scope, extent, or intent of these rules or any of their provisions.

## **Severability**

**6.7** If any provision of these rules will be invalid, illegal, or unenforceable to any extent, the remainder of these rules and their application will not be affected and will be enforceable to the fullest extent permitted by law unless the provision held to be illegal, invalid or unenforceable is so fundamental to the sense of these rules that its illegality, invalidity or unenforceability would make the enforceability of the remainder unreasonable.

## **Entire agreement**

**6.8** These rules and the documents referred to in them, constitute the entire agreement between You and the Organiser and supersede all other agreements or arrangements, whether written or oral, express or implied, between You and the Organiser. Successors and assigns

**6.9** These rules will be binding upon the Organiser's and Your successors and assigns and personal representatives.

## **No waiver**

**6.10** Neither You nor the Organiser will be affected by any delay or failure in exercising or any partial exercising of any rights under these rules unless it has signed an express written waiver or release.]

## **VAT**

**6.11** All payments to be made by You under these rules are exclusive of VAT or other applicable taxes or duties which will, where applicable, be paid in addition by You.

## **Remedies**

**6.12** The rights, powers and remedies provided in these rules are cumulative and not exclusive of any rights, powers and remedies provided by law. The exercise or partial exercise of any right, power or remedy provided by law or under these rules will not preclude any other or further exercise of them or the exercise of any other right, power or remedy.

## **Authority to execute**

**6.13** The Signatory executing these rules on behalf of another person represents and warrants that he is empowered to execute them and that all necessary action to authorise their execution has been taken.

## **Governing law and jurisdiction**

**6.14** These rules are to be governed by and construed in accordance with South African law and the courts of South Africa are to have jurisdiction to settle any dispute in connection with these rules.