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COMDI AGRICULTURAL MARKETS PTY (LTD)

GENERAL TERMS AND CONDITIONS – FIXED BASIS SELL

1. DEFINITIONS AND INTERPRETATION

1.1 Annexure "A" hereto contains and provides the rules of interpretation and the definitions used throughout, and applicable to, these General Terms and Conditions – Fixed Basis Sell.

1.2 Annexure "A" shall be deemed to be incorporated in and shall form part of these General Terms and Conditions – Fixed Basis Sell.

2. PARTIES

2.1 The Parties to the Agreement are the Seller and the Purchaser.

3. COMMENCEMENT AND DURATION

3.1 The Agreement shall become of full force and effect on, and with effect from, the Signature Date and shall, subject to the rights of cancellation/termination recorded in the Agreement, endure until such a time as each Party has fully and finally discharged each and every of its obligations under and in terms of the Agreement.

3.2 The expiry or termination of the Agreement remains subject to the provisions of clause 2.3 of Annexure "A" and shall not prejudice the rights of any Party in respect of any antecedent breach or non-performance by the other Party of any of the terms or conditions of the Agreement.

4. DELIVERY

4.1 General

4.1.1 The Seller shall deliver, and the Seller warrants and guarantees that it shall deliver, the Quantity of the Commodity to the Purchaser, at the Delivery Point and within the Delivery Period, under and in terms of the provisions of the Incoterm (subject to clauses **Error! Reference source not found.**);

4.1.2 If the Purchased Commodity tendered for delivery to the Purchaser is already stored in a silo/warehouse by the Seller and same is not intended to be moved from such silo/warehouse for delivery to the Purchaser, then delivery shall be deemed and regarded to have been completed upon the applicable silo certificate or other applicable document of title having been presented and delivered to the Purchaser.

4.2 Quantity Determination

4.2.1 In the event that the Delivery Point is "on-farm" at the Seller's farm, the quantity of Commodity tendered for delivery by the Seller will be determined by the Receiver at an assized weighbridge at/on the Delivery Point, or at the assized weighbridge nearest to the Delivery Point in the event that there is no assized weighbridge at/on the Delivery Point (having regard to the transport route selected, and without the need and/or requirement of the Purchaser, the Receiver or anyone else to deviate from such transport route).

4.2.2 In the event that the Delivery Point is "off-farm" at a location other than the Seller's farm, the quantity of Commodity tendered for delivery by the Seller will be determined by the Receiver at an assized weighbridge at the Delivery Point.

4.2.3 In the event of delivery in terms of clause 4.1.2, the quantity of Commodity tendered for delivery by the Seller will be determined as per the silo certificate or other relevant document of title delivered to and accepted by the Purchaser. The quantity reflected in the relevant certificate or other document of title delivered to and accepted by the Purchaser shall, unless disputed by the Purchaser and in the absence of manifest error, be final and binding upon the Parties.

4.2.4 All weighing tickets regarding the quantity of Commodity tendered for delivery by the Seller shall be mechanically or electronically printed, and weighbridges used to determine the quantity of Commodity tendered for delivery by the Seller shall conform to the verification periods, as required by the South African laws governing trade metrology, for weighing and measuring instruments used in trade.

4.2.5 The Receiver's determination regarding Commodity quantity, determined as per the provisions of clauses 4.2.1 and/or 4.2.2 shall, unless disputed by the Purchaser and in the absence of manifest error, be final and binding upon the Parties.

4.2.6 Any and all costs and expenses incurred in terms of clauses 4.2.1 and/or 4.2.2 in determining the quantity of Commodity tendered for delivery by the Seller, shall be for the Seller's account. The Seller shall, upon first demand therefore being made by the Purchaser, reimburse the Purchaser for any and all costs and expenses incurred by the Purchaser in this regard. Reimbursement by the Seller to the Purchaser in terms of this clause 4.2.6 shall furthermore be subject to the terms and conditions referenced in clause 7.

4.3 **Quality Determination**

4.3.1 Subject to clause 4.3.2, the quality of Commodity tendered for delivery by the Seller shall, after reasonable inspection, be determined by the Receiver at the Delivery Point. The quality determined by the Receiver as aforementioned shall, unless disputed by the Purchaser and in the absence of manifest error, be final and binding upon the Parties.

4.3.2 In the event of delivery in terms of clause 4.1.2, the quality of Commodity tendered for delivery by the Seller will be determined as per the silo certificate or other relevant document of title delivered to and accepted by the Purchaser. The quality reflected in the relevant certificate or other document of title delivered to and accepted by the Purchaser shall, unless disputed by the Purchaser and in the absence of manifest error, be final and binding upon the Parties.

4.4 **Silo/Warehouse Costs and Expenses**

4.4.1 The Seller will be liable for all silo/warehouse expenses and costs (including handling, delivery and storage costs and expenses), regarding Commodity tendered for delivery by the Seller and accepted by the Purchaser, up to the moment of delivery of the Commodity to the Purchaser having been completed in terms of clause 4.1. The Seller shall, in the event that the Purchaser has incurred any costs and/or made any expenses in this regard, reimburse to the Purchaser such costs and expenses upon first demand therefore being made by the Purchaser. Reimbursement by the Seller to the Purchaser in terms of this clause 4.4.1 shall furthermore be subject to the terms and conditions referenced in clause 7.

4.5 **Purchaser Delivery Refusal and Rejection**

4.5.1 In the event that the Seller tenders to the Purchaser delivery of a quantity of Purchased Commodity which is in excess of the Purchased Quantity, the Purchaser may, in its sole and absolute discretion, either reject and refuse to accept the excess quantity (in whole) or accept delivery of the excess quantity (in whole).

4.5.2 In the event that the Seller tenders to the Purchaser delivery of a quantity of Commodity which, albeit as relates to the entire delivery or only a part/portion thereof, does not conform to the Minimum Quality Standards, then the Purchaser may, in its sole and absolute discretion:

4.5.2.1 reject and refuse to accept the entire delivery; or

4.5.2.2 accept such a part/portion of the delivery as conforms to the Minimum Quality Standards and reject and refuse the remainder of the delivery; or

4.5.2.3 accept the entire delivery.

4.5.3 In the event that the Seller tenders to the Purchaser delivery of a quantity of Commodity after the expiry of the Delivery Period, then the Purchaser may, in its sole and absolute discretion, either reject and refuse to accept the entire delivery or accept the delivery.

4.5.4 In the event that the Seller tenders to the Purchaser delivery of a quantity of Commodity before the commencement of the Delivery Period, then the Purchaser may, in its sole and absolute discretion, either reject and refuse to accept the entire delivery until commencement of the Delivery Period or accept the delivery.

5. OWNERSHIP

5.1 Notwithstanding the delivery of any Purchased Commodity to the Purchaser by the Seller, ownership and benefit of such delivered Purchased Commodity shall remain vested in the Seller until such a time as the Seller has received payment from the Purchaser of the full Purchase Price relating thereto.

5.2 The Seller reserves the right to repossess any Purchased Commodity delivered to the Purchaser, without prejudice, or to resell such delivered Purchased Commodity from the Purchaser's premises (or such other premises as the Purchased Commodity may have been moved to or may be situated at), should payment of the full Purchase Price related thereto not be received in full by the due date for payment.

5.3 The Purchaser shall not have any right and entitlement to, nor shall it, in any way, manner or form pledge the whole or any part of the delivered Purchased Commodity to any third party/ies as security for and by virtue of monies loaned or advanced to the Purchaser by the relevant third party/ies or otherwise, until such a time as the entire Purchase Price in respect thereof has been settled. The Purchaser shall ensure that the Seller's right, title and interest of ownership in and to delivered Purchased Commodity is at all times known and clear to third parties who trade or otherwise deal with the Purchaser, until such a time as the entire Purchase Price in respect thereof has been settled.

6. PURCHASE PRICE

6.1 **General**

6.1.1 The Purchaser shall pay the Purchase Price to the Seller as consideration for the Purchaser's acquisition of the Delivered Quantity.

6.1.2 The Seller shall provide the Purchaser with a VAT invoice reflecting the amount payable by the Purchaser to the Seller as consideration for the Purchaser's acquisition of the Delivered Quantity.

6.1.3 The Purchaser will make payment of the Seller's VAT invoice as per the provisions recorded in the relevant/applicable Purchase and Sale Contract Confirmation (refer part M of the "*transaction details*" relevant/applicable Purchase and Sale Contract Confirmation).

6.2 **Purchase Price Discount/Reduction**

6.2.1 In the event that the Purchaser accepts delivery of Commodity which does not conform to the Minimum Quality Standards, the Purchase Price payable by the Purchaser to the Seller for Commodity delivered shall be reduced/discounted by the Quality Discount Amount.

7. GENERAL PAYMENT PROVISIONS

7.1 All amounts recorded, calculated and/or otherwise determined under and in terms of the Agreement are exclusive of VAT. As such, and for as far as may be legally relevant/applicable, the Seller shall be entitled to calculate, claim and recover VAT on all amounts owing to it hereunder against the Purchaser.

7.2 Any and all amounts due and owing by the Purchaser to the Seller under and in terms of the Agreement shall be paid:

7.2.1 on or before the due date of payment thereof;

7.2.2 via electronic funds transfer;

7.2.3 in South African currency;

7.2.4 into such a bank account as the Seller may nominate; and

7.2.5 free of any and all deduction, set-off, counterclaim and/or withholding of any nature whatsoever.

8. WARRANTIES AND GUARANTEES

8.1 Each of the Parties hereby warrants to and in favour of the others that:

8.1.1 it has the legal capacity and has taken all necessary corporate action required to empower and authorise it to enter into this Agreement;

8.1.2 this Agreement constitutes an agreement valid and binding on it and enforceable against it in accordance with its terms;

8.1.3 the execution of this Agreement and the performance of its obligations hereunder does not and shall not:

8.1.3.1 contravene any law or regulation to which that Party is subject;

8.1.3.2 contravene any provision of that Party's constitutional documents; or

8.1.3.3 conflict with, or constitute a breach of any of the provisions of any other agreement, obligation, restriction or undertaking which is binding on it.

8.2 Each of the representations and warranties given by the Parties in terms of clause 8.1, shall –

8.2.1 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;

8.2.2 continue and remain in force notwithstanding the completion of any or all the transactions contemplated in this Agreement; and

8.2.3 *prima facie* be deemed to be material and to be a material representation inducing the other Parties to enter into this Agreement.

9. CESSION AND DELEGATION

9.1 The Purchaser may cede, assign, delegate and/or otherwise transfer the whole or any part of its rights, duties and/or obligations under and in terms of the Agreement, and/or the whole and/or any part of the Agreement, without the consent of the Seller being obtained at any time whatsoever, in any manner whatsoever and/or for any reason whatsoever.

9.2 The Seller may not, and it shall not, cede, assign, delegate and/or otherwise transfer the whole or any part/portion of its rights, duties and/or obligations under and in terms of the Agreement, and/or the whole and/or any part of the Agreement, without the prior written consent of the Purchaser first being obtained.

10. INDEMNITY

10.1 The Purchaser herewith indemnifies and undertakes to, upon first demand, hold the Seller wholly and completely harmless with regard to any and all (including consequential, indirect and/or special) claims, damages, losses, costs, demands and/or expenses which the Seller may suffer and/or incur as a result of:

10.1.1 the Purchaser breaching, in any form or manner, at any time whatsoever and/or to any extent whatsoever, any of the terms and/or conditions of this Agreement; and/or

10.1.2 the Purchaser failing to timeously discharge any and/or all of its duties, liabilities and/or obligations under and in terms of any of the provisions of this Agreement; and/or

10.1.3 any of the warranties and/or guarantees delivered by the Purchaser under and in terms of the Agreement failing to hold wholly and completely true and accurate at any time whatsoever.

11. INTEREST

11.1 Any and all amounts due and/or owing by the Purchaser to the Seller under and in terms of the Agreement will bear interest in favour of the Seller against the Purchase at the Prime Rate, as of the due date for payment until the date of actual payment thereof.

11.2 All interest accrued in favour of the Seller in terms of clause 11.1, shall be payable by the Purchaser to the Seller upon first demand therefore being made by the Seller. Payment by the Purchaser to the Seller in terms of this clause 11.2 shall furthermore be subject to the terms and conditions referenced in clause 7.

12. LIMITATION OF LIABILITY

12.1 The Seller shall never be liable and/or accountable to and/or towards the Purchaser for any indirect, special and/or consequential losses, costs, demands, claims, damages and/or expenses which the Purchaser may suffer or incur at any time whatsoever and/or for any reason whatsoever.

12.2 The Seller shall never be liable and/or accountable to and/or towards the Purchaser for any losses, costs, demands, claims, damages and/or expenses which the Purchaser may suffer or incur at any time whatsoever and/or for any reason whatsoever (albeit of a direct nature), unless same was caused by the wilfully malicious and/or grossly negligent acts and/or neglects of the Purchaser.

13. BREACH

13.1 Should any of the Parties to the Agreement commit a breach of the Agreement and fail to remedy that breach within 7 (seven) days after receipt of a written notice calling upon it to do so, then the Party calling for such

remedy shall be entitled, in addition to and without prejudice to any right or remedy it or they may have under the circumstances, either to:

13.1.1 enforce the performance of the terms hereof and claim damages; or

13.1.2 subject to clause 13.2, cancel the Agreement and claim damages.

13.2 Notwithstanding the aforegoing, the Purchaser shall not be entitled to cancel the Agreement in consequence of a breach of any of the terms of the Agreement, unless such breach is material and is incapable of being remedied by a payment of money or, if it is capable of being remedied by a payment in money, the Seller fails to pay to the Purchaser the amount concerned within 14 (fourteen) Business Days after such amount has been demanded in writing, or if the amount or liability therefore is disputed, within 14 (fourteen) Business Days of the final determination thereof.

14. IMMEDIATE TERMINATION

14.1 In addition to any other rights of cancellation/termination referenced in the Agreement and without limiting or detracting from any other rights the Seller may have in terms hereof or otherwise at law (including the right to claim damages), the Seller will be entitled to cancel/terminate the Agreement with immediate effect, in the event that:

14.1.1 the Purchaser is liquidated or sequestrated (either provisionally or finally), surrenders his/her/its estate, compromises (or attempts to compromise) with any of his/her/its creditors, is placed under business rescue or suffers any similar or analogue event/situation;

14.1.2 the Seller determines that a ruling by a Court or governmental agency, coupled with the continued existence of the Agreement and/or the relationship constituted thereby, may have a negative impact on the Seller's business, in the Seller's sole and absolute discretion;

14.1.3 a Court or governmental agency of competent authority determines that the Agreement, or any of its provisions, is unenforceable; and/or

14.1.4 the Purchaser is, in the Seller's opinion, guilty of conduct which is prejudicial to the Seller's interests.

15. INDEPENDENT EXPERTS

15.1 Notwithstanding anything else contained herein to the contrary, in the event of a dispute between the Parties regarding any amounts due and/or owing by one Party to another under and in terms of the Agreement, albeit as relates to the calculation of the amount and/or otherwise, such dispute shall be referred to and determined by an Independent Auditor. The Party against whom a decision is made by the Independent Auditor shall bear all the costs related to the dispute and the determination thereof (incl. the charges of the Independent Auditor).

15.2 Notwithstanding anything else contained herein to the contrary, in the event of a dispute between the Parties regarding the quality of any Commodity delivered or tendered for delivery by the Seller to the Purchaser, albeit as relates to whether such Commodity complies with the Minimum Quality Standards or otherwise, such dispute shall be referred to and determined by an Independent Quality Expert. The Party against whom a decision is made by the Independent Quality Expert shall bear all the costs related to the dispute and the determination thereof (incl. the charges of the Independent Quality Expert).

16. ARBITRATION

16.1 Save as otherwise expressly provided in the Agreement, should any dispute arise between the Parties in regard to –

16.1.1 the interpretation of;

16.1.2 the effect of;

16.1.3 the Parties' respective rights or obligations under;

16.1.4 a breach of;

16.1.5 the termination of;

16.1.6 any matter arising out of the termination of; and/or

16.1.7 the rectification of;

the Agreement, that dispute shall be decided by arbitration in the manner set out in this clause 15.1 by a single arbitrator without the right of appeal.

16.2 The arbitrator shall be appointed by the Parties by way of unanimous agreement, and failing agreement, shall be nominated by AFSA. Should AFSA not be in existence at the time, the nomination shall be by the Chairman for the time being of the Pretoria Bar Council.

16.3 The arbitration shall be held in English at Pretoria, at such a venue as determined by the Purchaser.

16.4 The arbitration shall be held in accordance with the rules of AFSA, or if AFSA is not in existence at the time, in accordance with the formalities and procedures settled by the arbitrator, which shall be in an informal and summary manner, that is, it shall not be necessary to observe or carry out either the usual formalities or procedure or the strict rules of evidence.

16.5 The arbitrator shall be entitled to –

16.5.1 investigate or cause to be investigated any matter, fact or thing which he considers necessary or desirable in connection with any matter referred to him for decision; and

16.5.2 make such award, including an award for specific performance, an interdict, damages, a penalty, the costs of arbitration or otherwise, as he in his discretion may deem fit and appropriate.

16.6 The arbitration shall be held as quickly as possible after it is demanded, with a view to it being completed within 30 (thirty) days after it has been so demanded.

16.7 The arbitration shall be held in camera and the Parties shall maintain the utmost confidentiality with regard to all matters in issue in the arbitration.

16.8 This clause is severable from the rest of the Agreement and shall therefore remain in effect even if the Agreement is terminated.

16.9 The provisions of this clause 15.1 shall not preclude any of the Parties from due access to the courts of law for an interdict or any urgent relief, even where a dispute exists.

17. GENERAL

17.1 **Waiver**

17.1.1 No waiver (giving away or relaxation in exercising of rights) of any of the terms of the Agreement will be binding for any purpose unless expressed in writing and signed by the Party giving it, and any such waiver will be effective only in the specific instance and for the purpose given.

17.1.2 No failure or delay of any Party in exercising any right, power or privilege will operate as a waiver.

17.1.3 Any single or partial exercise of any right, power or privilege does not prevent any other or further exercise of same or the exercise of any other right, power or privilege.

17.2 **Counterparts**

17.2.1 The Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original and all of which shall constitute one and the same agreement.

17.3 **Severability**

17.3.1 The Parties agree that each and every provision of the Agreement is severable from the remaining provisions of the Agreement and should any provision of the Agreement be in conflict with any applicable law, or be held to be unenforceable or invalid for any reason whatsoever, such provision should be treated as pro non scripto and shall be severable from the remaining provisions of the Agreement which shall continue to be of full force and effect. However, where a provision is material for the validity of the Agreement as a whole, then the Seller undertakes to the Purchaser that it will, at the election of the Purchaser, negotiate in good faith to agree a valid provision in place of the void or invalid provision and thereby preserve the Agreement in force.

17.4 **Relaxation**

17.4.1 No latitude, extension of time or other indulgence which may be given or allowed by any Party to another Party in respect of the performance of any obligation hereunder, and no delay or forbearance in the enforcement of any right of any Party arising from the Agreement, and no single or partial exercise of any right by any Party under the Agreement, shall in any circumstances be construed to be an implied consent or election by such Party or operate as a waiver or a novation of or otherwise affect any of the Party's rights in terms of or arising from the Agreement or estop or preclude any such Party from enforcing at any time and without notice, strict and punctual compliance with each and every provision or term hereof.

17.5 **Variation**

17.5.1 No addition to or variation, consensual cancellation or novation of the Agreement and no waiver of any right arising from the Agreement or its breach or termination shall be of any force or effect unless reduced to writing and signed by all the Parties or their duly authorised representatives.

17.6 **Whole Agreement**

17.6.1 The Agreement constitutes the whole agreement between the Parties as to the subject matter hereof and no agreements, representations or warranties between the Parties regarding the subject matter hereof other than those set out herein are binding on the Parties.

17.7 **Good Faith**

17.7.1 The Parties agree that they enter into the Agreement on the basis of trust and record that they will observe good faith in contracting and dealing with each other and implementing the provisions hereof. This implies, inter alia, that:

17.7.1.1 the Parties will at all times during the currency of the Agreement act reasonably and in good faith; and

17.7.1.2 the Parties will perform their obligations arising from the Agreement diligently and with reasonable care.

17.8 **Publicity**

17.8.1 Other as may be required by law, legislation or the rules of any recognised stock exchange, no public statements or announcements, oral or written, relating to the signing or contents of the Agreement, shall be made without the prior written consent of the Purchaser, which consent shall not be unreasonably withheld or delayed.

17.9 **Costs**

17.9.1 Each Party shall bear its own costs incidental to the negotiation, drafting and conclusion of the Agreement.

17.9.2 All costs, charges and expenses which may be incurred by way of the Purchaser enforcing and/or preserving any of its rights in terms of the Agreement, including legal costs on the scale as between attorney and own client and collection commission irrespective of whether any action has been instituted, shall be reimbursed by the Seller to the Purchaser upon first demand therefore being made by the Purchaser. Reimbursement by the Seller to the Purchaser in terms of this clause 17.9.2 shall furthermore be subject to the terms and conditions referenced in clause 7.

17.10 **Notices and address for notices**

17.10.1 The Seller chooses as its *domicilia citandi et executandi* the Seller Address for all purposes arising out of or in connection with the Agreement, at which all processes and notices arising out of or in connection with the Agreement, its breach or termination may validly be served upon or delivered to the Seller.

17.10.2 The Purchaser chooses as its *domicilia citandi et executandi* the Purchaser Address for all purposes arising out of or in connection with the Agreement, at which all processes and notices arising out of or in connection with the Agreement, its breach or termination may validly be served upon or delivered to the Purchaser.

17.10.3 Each of the Parties may change/amend their respective *domicilia citandi et executandi* recorded in clauses 17.10.1 and 17.10.2 by delivering written notice to that effect to the other Party, provided that a physical adress may not be changed to a post office box, poste restante, fax number, e-mail address or any other address which is not a physical address.

17.10.4 Any notice given in terms of the Agreement required to be in writing shall –

17.10.4.1 if delivered by hand, be deemed to have been duly received by the addressee on the date of delivery;

17.10.4.2 if dispatched by registered post, be deemed to have been duly received by the addressee 4 (four) days after the date of dispatch;

17.10.4.3 if transmitted by e-mail be deemed to have been received by the addressee on the 1st (first) Business Day following the date of dispatch, unless the contrary is proved.

17.10.5 Notwithstanding anything to the contrary contained or implied in the Agreement, a written notice or communication actually received by one of the Parties from another (including by way of e-mail transmission) shall be adequate written notice or communication to such Party.

17.11 **Offer**

17.11.1 By signing and executing a Purchase and Sale Contract Confirmation – Cash Sale and returning same to the Seller, the Purchaser makes an offer to the Seller to purchase the Purchased Quantity of the Purchased Commodity from the Seller under and in terms of the provisions of this Agreement and that Purchase and Sale Contract Confirmation. The aforementioned offer may only be revoked by the Purchaser in the event that same is not accepted by the Seller, in the manner contemplated in clause 17.11.1, within 60 (sixty) days of the Seller having received a signed and executed copy of the Purchase and Sale Contract Confirmation from the Purchaser.

17.11.2 The Seller will, if it so elects in its sole and absolute discretion, accept the offer of the Purchaser, contemplated in clause 17.11.1, by also signing a copy of the Purchase and Sale Contract Confirmation received from the Purchaser. .

17.12 **Signatory Undertakings and Obligations**

17.12.1 In the event that the Purchaser is not a natural person, the person signing this Agreement on behalf of the Purchaser and as the Purchaser's representative:

17.12.1.1 guarantees, by affixing his signature, that he/she is duly authorised to conclude the Agreement on behalf of the Purchaser, that the Agreement will be enforceable against the Purchaser and that should the Agreement not be enforceable against the Purchaser for any reason whatsoever, he/she will be bound to the Agreement as the Purchaser;

17.12.1.2 binds himself/herself to the Seller as surety and co-principal debtor jointly and severally, and *in solidium*, with the Purchaser for the prompt and proper fulfilment by the Purchaser of all of the Purchaser's obligations, duties and liabilities as set out in the Agreement;

17.12.1.3 guarantees that the Purchaser will comply with all of its obligations in terms of the Agreement;

17.12.1.4 indemnifies the Seller, and undertakes to hold the Seller harmless against all damages, claims, costs, expenses and/or demands that the Seller may suffer should the Purchaser fail to comply with all its obligations in terms of the Agreement or breaches any of its obligations in terms of or arising from the Agreement; and

17.12.1.5 waives, and renounces the benefits, the defences and exceptions of *benificia ordines seu excussionis*, *cedendarem actionem*, *beneficium divisionis*, *non causa debiti*, *de duobus vel pluribus reis debendi* and *no value received*, the full force, meaning and effect whereof he/she declares and warrants himself/herself to be fully and completely acquainted.

1. DEFINITIONS

1.1 In these General Terms and Conditions - Fixed Basis Sell and in the annexures to these General Terms and Conditions –Fixed Basis Sell, and unless the context clearly indicates a different intention, the following expressions bear the meanings given to them below and equivalent expressions will have similar meanings:

1.1.1 "**AFSA**" means the Arbitration Foundation of South Africa;

1.1.2 "**Agreement**" means these General Terms and Conditions – Fixed Basis Sell and a Purchase and Sale Contract Confirmation – Fixed Basis Sell collectively. For avoidance of doubt, each Purchase and Sale Contract Confirmation - Deferred Pricing No Advance shall, in conjunction with these General Terms and Conditions - Deferred Pricing No Advance, form a separate and distinct Agreement between the Parties;

1.1.3 "**Basis**" means (-) Transport Differential (-) Handling Costs (+/-) spread (+/-) premium

1.1.4 "**Business Day**" means any day other than a Saturday, Sunday and/or gazetted public holiday in the Republic of South Africa;

1.1.5 "**Commodity**" means the commodity, of the type, class, grade and packing, described in part A of the "transaction details" of the Purchase and Sale Contract Confirmation - Deferred Pricing No Advance;

1.1.6 "**Delivered Quantity**" means the quantity, in metric tons, of Commodity actually delivered to and accepted by the Purchaser, under and in terms of the provisions of the Agreement, up to a maximum of the Quantity;

1.1.7 "**Delivery Period**" means the period described in part I of the "transaction details" of the Purchase and Sale Contract Confirmation –Fixed Basis Sell ;

1.1.8 "**Delivery Point**" means the point at which the Purchaser will take delivery of Commodity from the Seller under and in terms of the provisions of the Agreement, and more specifically the point described in part F of the "transaction details" of the Purchase and Sale Contract Confirmation –Fixed Basis Sell ;

1.1.9 "**Early Delivery Discount Amount**" means the amount by which the Purchase Price will be reduced/discounted in the event that the Purchaser accepts delivery of Commodity before the commencement of the Delivery Period, and more specifically an amount equal to all costs and expenses incurred, or to be incurred, by the Purchaser by reason of the early delivery, which costs and expenses will include the prevailing market spread for early delivery and/or payment;

1.1.10 "**Futures Contract**" means the futures contract, determined in part C of the "transaction details" of the Purchase and Sale Contract Confirmation - Deferred Pricing No Advance;

1.1.11 "**General Terms and Conditions - Fixed Basis Sell**" means the General Terms and Conditions - Deferred Pricing No Advance to which this forms Annexure "A";

1.1.12 "**Grade Discount**" means the amount per grade described in part J of the "transaction details" of the Purchase and Sale Contract Confirmation –Fixed Basis Sell ;

1.1.13 "**Grain Contract Specifications**" means and includes the Grain Contract Specifications – Futures, and the other applicable rules and regulations, of the JSE regarding the agricultural markets division of SAFEX;

1.1.14 "**Handling Costs**" means the amount/s paid and/or payable by the Purchaser in respect of the silo in- and/or out-handling costs related to the purchase and/or delivery of the Commodity to be sold and delivered to the Purchaser under and in terms of the Agreement;

1.1.15 "**Incoterm**" means the Incoterm described in part G of the "transaction details" of the Purchase and Sale Contract Confirmation Fixed Basis Sell

1.1.16 "**Independent Auditor**" means an independent auditor, agreed between the Parties within 5 (five) days of being requested to do so by any of the Parties or, failing such agreement, nominated by the chairman for the time being of the South African Institute of Chartered Accountants after being requested to do so (by any of the Parties), provided such auditor has not had a relationship of any nature with any of the Parties in the 3 (three) years preceding such appointment, which auditor shall act as expert and not as arbitrator;

1.1.17 "**Independent Quality Expert**" means an independent person whom is expert in determining the quality of the Commodity, agreed between the Parties within 2 (two) hours of being requested to do so by any of the Parties or, failing such agreement, nominated by the Purchaser in its sole and absolute discretion, which independent person shall act as expert and not as arbitrator;

1.1.18 "**Late Delivery Discount Amount**" means the amount by which the Purchase Price will be reduced/discounted in the event that the Purchaser accepts delivery of Commodity after the expiry of the Delivery Period, and more specifically an amount equal to all costs and expenses incurred, or to be incurred, by the Purchaser by reason of the late delivery, which costs and expenses will include the prevailing market spread for late delivery and/or payment;

1.1.19 "**Market Price**" means and amount calculated as: the lowest market sales price available per metric ton for the Commodity in the open market upon the date of delivery, by the Seller, and acceptance, by the Purchaser, of any Over Delivered Quantity *less/plus* Basis;

1.1.20 "**Sell Contract Date**" means the date on which the per metric tonne price of the Quantity of the Commodity is priced as per clause 6.1.1 and as part N of the "transaction details" section of the Purchase and Sale Contract Confirmation – Fixed Basis Sell; ;

1.1.21 "**Sell Contract Date Deadline**" means the 5th (fifth) Business Day before the last day of the calendar month immediately preceding the Futures Contract month OR the date specified part N of the "transaction details" section of the Purchase and Sale Contract Confirmation – Fixed Basis Sell whichever is the earliest;

1.1.22 "**Sell Contract Date Price**" means the per metric tonne price at which the Quantity of the Commodity is priced on the Sell Contract Date *less/plus* Basis (refer part E of the "transaction details" of the Purchase and Sale Contract Confirmation Fixed Basis Sell;

1.1.23 "**Minimum Quality Standards**" means the minimum quality standards to which the Commodity must conform, and more specifically the Commodity must:

1.1.23.1 be of the class and grade recorded in part A of the "transaction details" section of the Purchase and Sale Contract Confirmation Fixed Basis Sell ; and

1.1.23.2 comply with the regulations (made under the Agricultural Products Standards Act, Act 119 of 1990) recorded in part A of the "transaction details" of the Purchase and Sale Contract Confirmation Fixed Basis Sell ; and

1.1.23.3 be of good, sound and merchantable quality; and

1.1.23.4 be fit, in all respects and aspects, for the purpose for which the Purchaser purchases same;

1.1.24 "**Non-Delivery**" means:

1.1.24.1 the Seller failing to tender to the Purchaser delivery of any quantity of Commodity; and/or

1.1.24.2 the Purchaser refusing to accept delivery of any quantity of Commodity tendered for delivery by the Seller;

under and in terms of the provisions of the Agreement, resulting therein that no Commodity is delivered to the Purchaser;

1.1.25 "**Over Delivered Quantity**" means the quantity of Commodity delivered by the Seller and accepted by the Purchaser which exceeds the Quantity;

1.1.26 "**Parties**" means the Seller and the Purchaser collectively, and "Party" means either of them as the context requires;

1.1.27 "**Prime Rate**" – means the prime rate of interest charged by First National Bank from time to time plus 2% (two percent), calculated daily and capitalised monthly in arrears;

1.1.28 "**Purchaser**" means the person/entity described and identified as the "Buyer" under "Seller and Buyer Details" section of the Purchase and Sale Contract Confirmation - Deferred Pricing No Advance;

1.1.29 "**Purchase Price**" means the amount payable by the Purchaser to the Seller as consideration for the Purchaser's acquisition of the Delivered Quantity and the Over Delivered Quantity (if applicable), and more specifically an amount calculated as follows:

[***Delivered Quantity*** *x (times)* ***Sell Contract Date Price***]

\+ (*plus*) [***Over Delivered Quantity*** *x (times)* ***Market Price***]

= (equals) ***Purchase Price***

1.1.30 "**Purchaser Address**" means the Purchaser's physical address, postal address, fax number and/or e-mail address as recorded under the "Seller and Buyer Details" section of the Purchase and Sale Contract Confirmation –Fixed Basis Sell ;

1.1.31 "**Purchase and Sale Contract Confirmation - Fixed Basis Sell**" means a Purchase and Sale Contract Confirmation – Fixed Basis Sell entered into and concluded by and between the Seller and the Purchaser;

1.1.32 "**Quality Discount Amount**" means the amount by which the Purchase Price shall be reduced/discounted in the event of the Purchaser accepting delivery of Commodity which does not conform to the Minimum Quality Standards, and more specifically an amount calculated as follows:

Grade Discount

x (times) *number of grades by which the grade of accepted non-conforming Commodity is lower than the grade described in part A of the "transaction details" of the Purchase and Sale Contract Confirmation – Fixed Basis Sell*

x (times) *the quantity, in metric tonnes, of non-conforming Commodity accepted by the Purchaser*

= (equals) *Quality Discount Amount*

1.1.33 "**Quantity**" means the quantity of the Commodity to be delivered by the Seller to the Purchaser, and more specifically the quantity described in part B of the "transaction details" of the Purchase and Sale Contract Confirmation – Fixed Basis Sell.

1.1.34 "**Receiver**" means the Purchaser's agent and/or representative at the Delivery Point whom is appointed by the Purchaser to, for and on behalf of the Purchaser, take delivery of such a quantity of Commodity as has been approved and accepted by the Purchaser for delivery in terms of clause **Error! Reference source not found.** of these General Terms and Conditions –Fixed Basis Sell.

1.1.35 "**Seller**" means the person/entity described and identified as the "Seller" under "Seller and Buyer Details" section of the Purchase and Sale Contract Confirmation –Fixed Basis Sell.

1.1.36 "**Seller Address**" means the Seller's physical address, postal address, fax number and/or e-mail address as recorded under the "Seller and Buyer Details" section of the Purchase and Sale Contract Confirmation –Fixed Basis Sell.

1.1.37 "**Short Delivery**" means the Delivered Quantity being less than the Quantity;

1.1.38 "**Signature Date**" means the date of signature of the Purchase and Sale Contract Confirmation - Fixed Basis Sell by the last Party signing;

1.1.39 "**Transport Differential**" means the transport differential published by the Johannesburg Stock Exchange in this regard;

1.1.40 "**VAT**" means value added tax under and in terms of the Value Added Tax Act, Act 89 of 1991.

2. **INTERPRETATION**

2.1 In the Agreement and in the annexures to the Agreement, and unless the context clearly indicates a contrary intention:

2.1.1 clause headings have been inserted for convenience only and shall not be taken into account in its interpretation;

2.1.2 if any provision in a definition is a substantive provision conferring rights or imposing obligations on any Party, effect shall be given to it as if it were a substantive clause in the body of the Agreement, annexure and/or schedule, notwithstanding that it is only contained in the definition;

2.1.3 words and/or terms defined in any clause shall, unless the application of any such word and/or term is specifically limited to that clause or unless another clause, annexure and/or schedule specifically assigns another definition to such word and/or term, bear the meaning assigned to such word and/or term throughout the Agreement;

2.1.4 if any period is referred to by way of reference to a number of days, the days shall be reckoned exclusively of the first and inclusively of the last day unless the last day falls on a day which is not a Business Day, in which case the last day shall be the first Business Day thereafter;

2.1.5 where the day on or by which anything is to be done, is not a Business Day, it shall be done on or by the first Business Day thereafter;

2.1.6 any reference to an enactment is to that enactment as at the Signature Date and as amended or re-enacted from time to time;

2.1.7 where figures are referred to in numerals and in words, if there is any conflict between the two, the words shall prevail;

2.1.8 a reference to a person includes such person's permitted successors, assignees, transferees or substitutes;

2.1.9 any reference to a document is a reference to that document as amended, novated, ceded or supplemented;

2.1.10 an expression which denotes:

2.1.10.1 any gender includes the other genders;

2.1.10.2 a natural person includes a juristic person and vice versa; and

2.1.10.3 the singular includes the plural and vice versa

2.1.11 the use of the word "including" followed by specific examples shall not be construed as limiting the meaning of the general wording preceding it and general words that follow specific words in a list, shall not be construed as referring only to the types of things identified by the specific words;

2.1.12 the phrase "**act as an expert and not as an arbitrator**" shall mean:

2.1.12.1 the determination of the person acting shall (in the absence of manifest error) be final and binding;

2.1.12.2 subject to any express provision to the contrary, the person acting shall determine the liability for its charges, which shall be paid accordingly;

2.1.12.3 the person acting shall be entitled to determine such methods and processes as he, in his sole discretion, deem appropriate in the circumstances provided that the person acting may not adopt any process which is manifestly biased, unfair or unreasonable;

2.1.12.4 the person acting shall consult with the relevant Parties (provided that the extent of the person acting's consultation shall be in his sole discretion) prior to rendering a determination; and

2.1.12.5 having regard to the sensitivity of any confidential information, the person acting shall be entitled to take advice from any person considered by him to have expert knowledge with reference to the matter in question.

2.2 Annexures to the Agreement (including this annexure "A") shall be deemed to be incorporated in and form part of the Agreement.

2.3 The expiration or termination of the Agreement shall not affect such of the provisions of the Agreement as expressly provide that they will operate after any such expiration or termination or which of necessity must continue to have effect after such expiration or termination, notwithstanding that the clauses themselves do not expressly provide for this.

2.4 The terms of the Agreement, having been negotiated, shall not be interpreted against the Party who procured its preparation and drafting, nor shall exclusion clauses contained in the Agreement be construed against the Party relying on same.

2.5 The Agreement shall be governed by, and construed and interpreted in accordance with, the laws of South Africa.