

## General Terms and Conditions of Retail Supply

THE COMPANY AND THE CLIENT AGREE THAT THE COMPANY WILL SUPPLY THE GOODS AND/OR RENDER THE SERVICES TO THE CLIENT AT THE CUSTOMARY PRICES DETERMINED FROM TIME TO TIME BY THE COMPANY, ON THE FOLLOWING PROVISIONS, TERMS AND CONDITIONS (“TERMS AND CONDITIONS”).

PLEASE READ THE FOLLOWING TERMS CAREFULLY AS THE SALE OF GOODS AND/OR RENDERING OF SERVICES WILL BE SUBJECT TO THESE TERMS.

### IMPORTANT NOTICE

1. These Terms and Conditions apply to Clients who may be consumers for purposes of the Consumer Protection Act, 68 of 2008 (the “CPA”) and to Clients who may not be consumers for the purposes of the CPA.
  2. **THESE TERMS AND CONDITIONS CONTAIN PROVISIONS THAT APPEAR IN SIMILAR TEXT AND STYLE TO THIS CLAUSE AND WHICH:**
    - 2.2.1 **MAY LIMIT THE RISK OR LIABILITY OF THE COMPANY OR A THIRD PARTY; AND/OR**
    - 2.2.2 **MAY CREATE RISK OR LIABILITY FOR THE CLIENT; AND/OR**
    - 2.2.3 **MAY COMPEL THE CLIENT TO INDEMNIFY THE COMPANY OR A THIRD PARTY; AND/OR**
    - 2.2.4 **SERVES AS AN ACKNOWLEDGEMENT, BY THE CLIENT, OF A FACT.**
  3. Your attention as a consumer in terms of the CPA is specifically drawn to these terms and conditions because they are important and should be carefully noted.
  4. Do not accept these Terms and Conditions if you do not agree with or understand the meaning of it or any portion thereof, it is untrue and/or you have not been given enough time to read and comprehend the meaning of the terms and conditions or any other provision, term or condition that may be contained in these Terms and Conditions. If there is any provision in these Terms and Conditions that you do not understand, it is your responsibility to ask the Company to explain it to you before you accept the Terms and Conditions.
  5. These Terms and Conditions can only be changed, or other terms agreed, in written correspondence signed by a director or other senior officer of the Company. No subsequent behaviour of the Company, in accepting these Terms and Conditions from you with proposed amendments, can be taken to imply any acceptance by the Company of those proposed amendments.
  6. Nothing in these Terms and Conditions is intended or must be understood to unlawfully restrict, limit or avoid any right or obligation, as the case may be, created for either you or the Company in terms of the CPA.
1. **DEFINITIONS AND INTERPRETATION**
- 1.1 In this Agreement, unless the context indicates otherwise, the words and expressions set out below shall have the meanings assigned to them and cognate expressions shall have a corresponding meaning, namely:
    - 1.1.1 “**Agreement**” shall mean the Terms and Conditions set out herein and all annexures, if applicable, as amended, novated or restated from time to time;
    - 1.1.2 “**Business Day**” shall mean any day which is not a Saturday, Sunday or a public holiday in the Republic of South Africa;
    - 1.1.3 “**Client**” shall mean the party placing the Order and includes the Client’s successors-in-title and permitted assignees;
    - 1.1.4 “**CPA**” shall mean the Consumer Protection Act, 68 of 2008, as amended from time to time, read with the Consumer Protection Regulations 2011, promulgated thereunder;
    - 1.1.5 “**Company**” shall mean AFGRI Retail a division of AFGRI GROUP HOLDINGS PROPRIETARY LIMITED, registration number 2016/423375/07, a private company duly registered in accordance with the laws of the Republic of South Africa, with its registered address at 12 Byls Bridge Boulevard, Highveld Ext 73 Centurion 0157;
    - 1.1.6 “**Companies Act**” shall mean the Companies Act, 71 of 2008, as amended from time to time, read with the Companies Regulations 2011, promulgated thereunder;
    - 1.1.7 “**Disclosing Purpose**” shall mean the delivery of the Goods and/or the rendering of the Services by the Company to the Client and/or to comply with legal and regulatory

- requirements or when it is otherwise allowed by law and/or as set out in a Party's POPIA processing notice/s;
- 1.1.8 "Goods" shall mean any product provided by the Company indicated on any company forms, price lists, quotations, delivery notes, orders and invoices;
- 1.1.9 "Order" shall mean an order for Goods and/or Services placed on the Company by the Client;
- 1.1.10 "Party" shall mean any one of the Parties to this Agreement and "Parties" shall have a corresponding meaning;
- 1.1.11 "Personal Information" shall have the meaning ascribed thereto in POPIA;
- 1.1.12 "POPIA" means the Protection of Personal Information Act, 4 of 2013, together with any regulations thereto, as amended from time to time;
- 1.1.13 "Process" or "Processing" shall have the meaning given thereto under POPIA;
- 1.1.14 "Prime Rate" shall mean the publicly quoted nominal rate of interest per annum charged by ABSA Bank Limited (the "Bank") from time to time on unsecured overdraft facilities to its most favoured corporate clients, as certified by any general manager of the Bank, whose authority or appointment it shall not be necessary to prove, calculated on a nominal annual compounded monthly basis in arrears; and
- 1.1.15 "Services" shall mean any services rendered by the Company, indicated on any company forms, price lists, quotations, delivery notes, orders and invoices.
- 1.2 In this Agreement:
- 1.2.1 if any provision in a definition is a substantive provision conferring rights or imposing obligations on a Party, notwithstanding that it is only in the interpretation clause, effect shall be given to it as if it were a substantive provision in the body of this Agreement;
- 1.2.2 a Party includes a reference to that Party's successors-in-title and assigns allowed at law;
- 1.2.3 any reference to:
- 1.2.3.1 "business hours" shall be construed as being the hours between 08h00 and 17h00 on any Business Day;
- 1.2.3.2 "time" shall be based upon South African Standard Time;
- 1.2.3.3 "days" (other than a reference to Business Days), "months" or "years" shall be a reference to calendar days, calendar months or calendar years respectively;
- 1.2.3.4 "law" shall mean any law of general application and includes the common law and any statute, constitution, decree, treaty, regulation, directive, ordinance, by-law, order or any other enactment of legislative measure of government (including local and provincial government) statutory or regulatory body which has the force of law within the explicitly mentioned country; and
- 1.2.3.5 "person" shall mean any person, company, close corporation, trust, partnership or other entity whether or not having separate legal personality;
- 1.2.4 the words "include" and "including" mean "include without limitation" and "including without limitation". The use of the words "include" and "including" followed by a specific example or examples shall not be construed as limiting the meaning of the general wording preceding it;
- 1.2.5 the words "shall" and "will" and "must", used in the context of any obligation or restriction imposed on a Party, have the same meaning;
- 1.2.6 words and expressions defined in any clause shall, unless the application of any such word or expression is specifically limited to that clause, bear the meaning assigned to such word or expression throughout this Agreement;
- 1.2.7 unless otherwise provided, defined terms appearing in this Agreement in title case shall be given their meaning as defined, while the same terms appearing in lower case shall be interpreted in accordance with their plain English meaning;
- 1.2.8 a reference to any statutory enactment shall be construed as a reference to that enactment as at the commencement date of this Agreement and as amended or substituted from time to time;
- 1.2.9 unless specifically otherwise provided, any number of days prescribed shall be determined by excluding the first and including the last day or, where the last day falls on a day that is not a Business Day, the next succeeding Business Day;
- 1.2.10 if the due date for performance of any obligation in terms of this Agreement is a day which is not a Business Day then (unless otherwise stipulated) the due date for performance of the relevant obligation shall be the immediately succeeding Business Day;
- 1.2.11 where figures are referred to in numerals and in words, and there is any conflict between the two, the words shall prevail, unless the context indicates a contrary intention;

- 1.2.12 the rule of construction that this Agreement shall be interpreted against the Party responsible for the drafting of this Agreement, shall not apply;
- 1.2.13 the expiration or termination of this Agreement shall not affect such of the provisions of this 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;
- 1.2.14 no provision of this Agreement shall (unless otherwise stipulated) constitute a stipulation for the benefit of any person (*stipulatio alteri*) who is not a party to this Agreement;
- 1.2.15 any reference in this Agreement to “**this agreement**” or any other agreement or document shall be construed as a reference to this Agreement or, as the case may be, such other agreement or document, as amended, varied, novated or supplemented from time to time; and
- 1.2.16 in this Agreement the words “**clause**” or “**clauses**” and “**annexure**” or “**annexures**” and “**schedule**” or “**schedules**” refer to clauses and annexures or schedules to this Agreement.

## 2. **AGREEMENT**

- 2.1 The Terms and Conditions set out in this Agreement, together with any other standard terms and conditions of the Company, shall govern the purchase of the Goods and/or rendering of the Services to the Client from the Company to the entire exclusion of all other terms and conditions.
- 2.2 No terms and conditions endorsed on, delivered with or contained in the Client's documentation provided to the Company (“**other terms**”) will form part of this Agreement. **THIS AGREEMENT CAN ONLY BE CHANGED, OR OTHER TERMS AGREED, IN WRITTEN CORRESPONDENCE SIGNED BY A DIRECTOR OR OTHER SENIOR OFFICER OF THE COMPANY. NO SUBSEQUENT BEHAVIOUR OF THE COMPANY, IN ACCEPTING THIS AGREEMENT FROM THE CLIENT WITH PROPOSED AMENDMENTS, CAN BE TAKEN TO IMPLY ANY ACCEPTANCE BY THE COMPANY OF THOSE PROPOSED AMENDMENTS.**
- 2.3 The Client, by accepting any quotation from the Company, or placing any Order with the Company, acknowledges that all Goods sold and/or Services rendered by the Company to the Client shall be subject to and governed by the Terms and Conditions contained in this Agreement, together with any other standard Terms and Conditions of the Company.
- 2.4 In the event of a conflict between the Terms and Conditions of this Agreement and any other terms, the Terms and Conditions of this Agreement shall prevail. Any conflict between the provisions of the various sections of this Agreement and any other standard terms and conditions of the Company will be resolved in accordance with the following order of precedence (in descending order of priority):
- 2.4.1 in relation to conflicts pertaining to technical and/or financial issues and/or services and/or delivery issues specific to the Goods and/or Services being provided, the order of precedence shall be:
- 2.4.1.1 the applicable standard terms and conditions of the Company (including the schedules attached thereto, if any); and
- 2.4.1.2 this Agreement; and
- 2.4.2 in relation to all other conflicts, the order of precedence shall be:
- 2.4.2.1 this Agreement;
- 2.4.2.2 the applicable standard terms and conditions of the Company; and
- 2.4.2.3 the annexures/schedules to the foregoing documents in the same order of precedence attaching to the documents to which they are annexed.

## 3. **PRICE**

- 3.1 The price of any Goods sold and/or Services rendered shall be the price as per the Company's written quotation in respect of a specific Order, or in the absence of a written quotation, shall be the Company's usual current price at the time of dispatch of the Goods from the Company's premises and/or the rendering of the Services, as the case may be.
- 3.2 Any price letters distributed or advertisements placed by the Company are for guideline purposes only and shall not be binding on the Company. The Company has the right, from time to time, for any reason and without notice to the Client, to change the price of any Goods and/or Services.
- 3.3 Notwithstanding the placing of an Order by the Client and the acceptance thereof by the Company, the Company shall be at liberty to revise quotations or prices with or without notice to the Client, inter alia in the event of an increase in the cost of production of the Goods and/or

rendering of the Services or currency fluctuations which occurs after the date of the placing of the Order.

#### 4. **PAYMENT**

4.1 The Client shall pay the amount due to the Company, in accordance with the agreed trading terms, into an account specified by the Company to the Client, in writing, from time to time, free of deduction, demand, set-off, bank charges. If no trading terms were agreed to the Client shall pay the amount due to the Company within 30 (thirty) days from the date of the relevant statement, which date will be the last day of each succeeding month during which a particular delivery was made.

4.2 All amounts due by the Client to the Company shall be paid directly to the Company. No payment made to the Company's sales representatives, employees, agents or third parties shall be regarded as proper payment to the Company until such time as the funds have been credited to the Client's account as cleared funds.

4.3 No discount or rebate granted to the Client shall be binding on the Company unless a manager or director of the Company has agreed to such discount or rebate in writing. **NO OTHER PERSON MAY GRANT A DISCOUNT OR REBATE ON BEHALF OF THE COMPANY.**

4.4 Should the Client fail to make any payment, or any portion thereof, timeously and in full, the Company shall be entitled at its sole discretion to withdraw or reverse any agreed discount or rebate, alternatively, to set-off the amount owing by the Client against any rebate, credit, allowance or payment (if any) due to the Client by the Company.

4.5 **SHOULD THE CLIENT'S FINANCIAL POSITION BECOME UNSATISFACTORY TO THE COMPANY, THE COMPANY SHALL BE ENTITLED TO DEMAND PAYMENT FOR ANY CONSIGNMENT IN ADVANCE AND/OR TO DEMAND SATISFACTORY SECURITY FROM THE CLIENT.**

4.6 The Company will allocate any payments received under this Agreement firstly to costs and fees incurred by the Company, thereafter to arrear or penalty interest (if any), thereafter to interest and thereafter the balance (if any) to the principal debt due and/or owing to the Company, provided that the longest outstanding principal debt due and/or owing shall be settled first.

4.7 **IN ALL CASES WHERE THE CLIENT USES A POSTAL BANKING, ELECTRONIC OR SIMILAR METHOD OR SERVICE TO EFFECT PAYMENT, THE SUPPLIER OF SUCH SHALL BE DEEMED TO BE THE AGENT OF THE CLIENT.**

4.8 **UNLESS THE CLIENT OBJECTS TO THE CORRECTNESS OF ANY ENTRY ON ANY STATEMENT, DELIVERY NOTE AND/OR INVOICE WITHIN 7 (SEVEN) DAYS OF THE DATE OF DISPATCH OF SUCH STATEMENT AND/OR INVOICE, THE CLIENT SHALL BE DEEMED TO HAVE ACCEPTED THAT SUCH ENTRIES ARE CORRECT AND THAT SUCH ENTRIES ARE NOT DISPUTED.**

4.9 Notwithstanding the timeous raising of a complaint and/or dispute of liability by the Client, the Client shall, under no circumstances whatsoever, be entitled to withhold payment in respect of the Goods delivered and/or Services rendered by the Company, pending the resolution of any such dispute or complaint.

4.10 Where the due date for payment falls on a Sunday or South African public holiday, then the amount shall be paid by the Client on the following Business Day, except if such succeeding Business Day falls into a subsequent month in which event the due date for payment shall be the immediately preceding Business Day.

#### 4.11 **Card acquiring and security**

Card transactions will be acquired for AFGRI via PayGate (Pty) Ltd who are the approved payment gateway for all South African Acquiring Banks. DPO PayGate uses the strictest form of encryption, namely Secure Socket Layer 3 (SSL3) and no card details are stored on the website. Users may go to [www.paygate.co.za](http://www.paygate.co.za) to view their security certificate and security policy.

#### **Customer details separate from card details**

4.12 Customer details will be stored by AFGRI separately from the card details which are entered by the Client onto DPO PayGate's secure site. For more detail on DPO PayGate refer to [www.paygate.co.za](http://www.paygate.co.za).

#### 5. **ORDERS**

5.1 Orders for the Company's Goods and/or Services shall be made in writing and directed to the address as may be nominated by the Company from time to time.

5.2 **ALL VERBAL ORDERS SHALL BE CAPABLE OF ACCEPTANCE BY THE COMPANY, BUT THE COMPANY SHALL NOT BE RESPONSIBLE FOR ANY ERRORS OR**

**MISUNDERSTANDINGS OCCASIONED BY THE CLIENT'S FAILURE TO REDUCE ANY SUCH ORDERS TO WRITING.**

- 5.3 An Order placed with the Company by the Client shall constitute an irrevocable offer to purchase the Goods and/or the Services in question and shall be capable of acceptance by the Company, at its sole discretion, which acceptance shall be evidenced by the delivery of the Goods and/or rendering of the Services and/or written acceptance and/or confirmation of the Order.
- 5.4 Before an Order is placed for Goods the Client may first request a quotation from the Company for such Goods. **SHOULD THE COMPANY SUBMIT A QUOTATION TO THE CLIENT FOR THE SALE OF GOODS AND/OR RENDERING OF THE SERVICES, SUCH QUOTATION AND THE AVAILABILITY OF QUOTED ITEMS AND PRICES ARE ONLY VALID FOR A PERIOD OF 7 (SEVEN) DAYS AFTER THE DATE OF EACH FORMAL LETTER OF CONTRACT ISSUED BY THE COMPANY TO THE CLIENT AND ARE SUBJECT TO CHANGE AFTER THE AFOREMENTIONED 7 (SEVEN) DAY PERIOD.**
- 5.5 Any acceptance by the Client after the aforementioned 7 (seven) day period shall constitute a counter offer by the Client to the Company.
- 5.6 Any price quoted by the Company shall be subject to such minimum purchases as stated in the quotation.
- 5.7 The Company may require a deposit to be paid by the Client when an Order is placed. In such instance should the Client not take delivery and/or not make payment of the balance of the Order, in accordance with the Term and Conditions of this Agreement, the Company has the right to retain such deposit.
- 5.8 Some of the Goods sold by the Company is sold in standard quantities only. Accordingly, should a Client request a quotation or place an Order for any quantity of Goods that is not a standard quantity, the Company shall be entitled to submit a quotation for the nearest number of standard quantities of the Goods that is not less than the quantity of Goods ordered. If such quotation is accepted by the Client the resultant Order placed by the Client shall be for the supply of the quantity of the Goods specified in the quotation.
6. **DELIVERY OF GOODS AND RENDERING OF SERVICES**
- 6.1 The Company offers 2 (two) methods of delivery of the Goods to the Client, namely:
- 6.1.1 courier; or
- 6.1.2 self-collection.
- 6.2 Please refer to the Company's **Delivery Policy**, which is incorporated into this Agreement by reference. The Company's delivery charges are subject to change at any time, without prior notice to the Client. The applicable delivery charges will be reflected on the quotation that the Company will provide to the Client for the delivery of the Goods.
- 6.3 Delivery dates shall be treated as approximates only. Under no circumstances shall the Client be entitled to withdraw from or terminate an Order on account of any delay in delivery or have any claim of any nature whatsoever against the Company arising from late delivery.
- 6.4 Where Goods are to be delivered via courier, the Company will deliver the Goods to the Client as soon as reasonably possible, but no later than 30 (thirty) days of the date of receipt of the payment for such Goods ("**Delivery Period**"). The Company will notify the Client if it is unable to deliver the Goods during the Delivery Period. The Client may then, within 7 (seven) days of receiving such notification elect whether or not to cancel its Order for the Goods. If the Client elects to cancel its Order, the Company will reimburse the Client for the purchase price paid for such Goods.
- 6.5 **THE COMPANY'S OBLIGATION TO DELIVER THE GOODS TO THE CLIENT IS FULFILLED WHEN THE COMPANY DELIVERS THE GOODS TO THE PHYSICAL ADDRESS NOMINATED BY THE CLIENT FOR DELIVERY OF THE ORDER. THE CLIENT'S SIGNATURE OR THE SIGNATURE BY ANY OF ITS EMPLOYEES OR AGENTS (WHOSE AUTHORITY THE CLIENT SHALL NOT BE ENTITLED TO DENY OR REPUDIATE) OF THE COMPANY'S OFFICIAL DELIVERY NOTE SHALL CONSTITUTE PRIMA FACIE PROOF OF DELIVERY OF THE GOODS. THE COMPANY IS NOT RESPONSIBLE FOR ANY LOSS OR UNAUTHORISED USE OF THE GOODS, AFTER IT HAS DELIVERED THE GOODS TO THE PHYSICAL ADDRESS NOMINATED BY THE CLIENT.**
- 6.6 **THE COMPANY MAY BE REQUESTED TO STORE THE GOODS PURCHASED AND PAID FOR AT THE PREMISES OF THE COMPANY, IN WHICH EVENT THE CLIENT SHALL BEAR THE RISK OF DAMAGE TO, DESTRUCTION OR THEFT OF THE GOODS SO STORED.**

- 6.7 **THE COMPANY SHALL HAVE NO LIABILITY OF ANY NATURE WHATSOEVER ARISING OUT OF OR ABOUT ANY DEFECT IN ANY GOODS UNLESS THE COMPANY HAS BEEN CALLED UPON BY A CLIENT, IN WRITING, TO RECTIFY THE DEFECT WITHIN SEVEN (7) DAYS OF DELIVERY OF THE GOODS. THE COMPANY SHALL NOT BE OBLIGED TO RECTIFY SUCH DEFECTS IF ANYONE NOT AUTHORIZED BY THE COMPANY HAS MODIFIED, ALTERED, OR ATTEMPTED TO REPAIR THE GOODS AND/OR WHERE THE GOODS HAVE NOT BEEN USED FOR THE PURPOSE FOR WHICH THEY WERE DESIGNED OR INTENDED.**
- 6.8 The Client shall return such Goods to the premises of the Company, at the Client's own cost, and packed in the original packaging within 30 (thirty) days from the original date of delivery. The Company shall be entitled to charge the Client a handling fee of 15% of the total amount of the invoice relating to such Goods. The Company shall endeavour to replace such defective Goods or rectify the defect contained in the Goods, if capable of being remedied, within a period of 30 (thirty) days or such longer period as may be required by the Company.
- 6.9 Please refer to the Company's **Returns Policy** for more information about returning Goods (and related refunds, replacements or repairs), which policy is incorporated into this Agreement by reference.
- 6.10 The Company shall render such Services to the Client, as specified in the Company's written quotation. The Client shall provide the Company with such drawings, designs and specifications that may be required by the Company to render the Services. Such drawings, designs and specifications shall serve for description purposes only and shall not form part of this Agreement.
- 6.11 The Company shall commence with the rendering of the Services once the Company's written quotation in respect of a specific Order is accepted, in writing, by the Client on such date/s as the Client will be informed by the Company. The Company shall provide the Client with regular updates on the progress of the Services as and when deemed necessary by the Company.
- 6.12 Additional Services required, by the Client, to be performed by the Company after the Company's written quotation in respect of a specific Order was accepted shall be quoted for by the Company for acceptance by the Client in terms of clause 5.4 above. Only once this quotation is formally accepted by the Client shall the Company commence with the rendering of such additional Services to the Client.
7. **OWNERSHIP AND RISK**  
**OWNERSHIP IN ANY GOODS DELIVERED BY THE COMPANY TO THE CLIENT SHALL REMAIN VESTED IN THE COMPANY UNTIL PAID FOR IN FULL, HOWEVER RISK IN AND TO THE GOODS WILL TRANSFER TO THE CLIENT UPON DELIVERY TO THE CLIENT, UNLESS OTHERWISE STATED IN THIS AGREEMENT.**
8. **WARRANTIES, REPRESENTATIONS AND INDEMNITIES BY THE COMPANY**
- 8.1 **THE COMPANY, ITS EMPLOYEES AND/OR AGENTS GIVE NO WARRANTIES OR GUARANTEES, WHETHER EXPRESS, IMPLIED OR TACIT, TO THE CLIENT OTHER THAN THOSE WHICH THE COMPANY IS OBLIGED TO GIVE IN LAW, SUCH AS:**
- 8.1.1 **THAT THE GOODS ARE REASONABLY SUITABLE FOR THE PURPOSE FOR WHICH THEY ARE GENERALLY INTENDED;**
- 8.1.2 **THAT THE GOODS ARE OF GOOD QUALITY AND IN GOOD WORKING ORDER;**
- 8.1.3 **THAT THE GOODS WILL BE USABLE AND DURABLE FOR A REASONABLE PERIOD OF TIME, HAVING REGARD TO THE USE TO WHICH THEY WOULD NORMALLY BE PUT AND TO ALL THE SURROUNDING CIRCUMSTANCES OF THEIR SUPPLY; AND**
- 8.1.4 **COMPLY WITH ANY APPLICABLE STANDARDS SET UNDER THE STANDARDS ACT, 29 OF 1993 OR ANY OTHER APPLICABLE PUBLIC REGULATION.**
- 8.2 **THE COMPANY, ITS EMPLOYEES AND/OR AGENTS SHALL NOT BE LIABLE (TO THE FULLEST EXTENT PERMISSIBLE BY LAW), WHETHER IN CONTRACT OR DELICT OR OTHERWISE, FOR ANY DEFECT IN THE GOODS DELIVERED OR SERVICES RENDERED, FOR ANY INJURY (UNLESS AS A RESULT OF THE GROSS NEGLIGENCE, WILFUL DEFAULT OR FRAUD BY THE COMPANY OR FOR ANY DAMAGE OR LOSS RESULTING FROM SUCH DEFECT OR ANY WORK DONE IN CONNECTION THEREWITH, WHETHER THROUGH THE NEGLIGENCE (EXCLUDING GROSS NEGLIGENCE) OR OTHERWISE OF THE COMPANY).**
- 8.3 **THE COMPANY, ITS EMPLOYEES AND/OR AGENTS SHALL NOT BE LIABLE (TO THE FULLEST EXTENT PERMISSIBLE IN LAW) FOR ANY LOSS OR DAMAGE OF WHATSOEVER NATURE SUSTAINED BY THE CLIENT OR ANY OTHER PERSON, NOR SHALL THE COMPANY BE LIABLE FOR ANY DELICTUAL, SPECIAL, DIRECT,**

**INDIRECT, GENERAL AND/OR CONSEQUENTIAL DAMAGES, INCLUDING (BUT NOT LIMITED TO) LOSS OF PROFITS, BUSINESS, REVENUE, GOODWILL OR ANTICIPATED SAVINGS.**

8.4 **IN THE EVENT THE COMPANY, ITS EMPLOYEES AND/OR AGENTS IS FOUND TO BE LIABLE FOR DAMAGES IN TERMS OF THIS AGREEMENT, THE EXTENT OF THE COMPANY'S LIABILITY SHALL NOT EXCEED (TO THE EXTENT PERMISSIBLE IN LAW) THE VALUE OF THE GOODS SOLD AND DELIVERED AND/OR SERVICES RENDERED OR AN AMOUNT OF R50 000.00 (FIFTY THOUSAND RAND) WHICHEVER IS THE LOWEST.**

8.5 The Company does not accept any responsibility whatsoever for the correctness of instructions which appear on the Goods not manufactured by the Company.

9. **WARRANTIES, REPRESENTATIONS AND INDEMNITIES BY THE CLIENT**

9.1 The Client makes the representations and warranties set out in this clause as at the acceptance date of this Agreement and for the duration of this Agreement and acknowledges that the Company has entered into this Agreement in reliance on these representations and warranties, each of which is material and is deemed a material representation inducing the Company to enter into this Agreement.

9.2 The Client has the power to execute and deliver this Agreement and to perform all its obligations hereunder (including, without limitation, the payment of all amounts) and all corporate and other action required to authorise its execution and its performance of such obligations have been duly taken.

9.3 The Client is not prohibited in terms of its constitutional documents, or otherwise, from entering into this Agreement or transactions contemplated by it to which it is a party.

9.4 All information (as supplemented from time to time) that has been or will hereafter be made available to the Company, by the Client or any of its representatives, in connection with the transactions contemplated herein is and will at all times be complete and correct in all material respects and does not and will not contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements contained therein not misleading in light of the circumstances under which such statements were or are made.

9.5 The Client agrees to supplement such information from time to time, so that same remains correct and acknowledges that the Company is acting in reliance on the accuracy of the information supplied to it without any independent verification.

9.6 No legal suit, action, proceeding or process or any other steps have been taken or, to the best of the Client's knowledge and belief, after having made all reasonable enquiries in this regard, threatened for the winding-up or liquidation (whether voluntary or involuntary, provisional or final) or de-registration or business rescue of the Client or for the appointment of a business rescue practitioner, liquidator or similar officer over the Client or over any assets of the Client.

9.7 The Client hereby warrants, represents and undertakes that:

9.7.1 the Client is not carrying on business recklessly, with gross negligence, with intent to defraud or for fraudulent purposes;

9.7.2 the Client it is not carrying on business or trading under insolvent circumstances;

9.7.3 that no application for an administration order or business rescue proceedings has been made to court in respect of the Client;

9.7.4 the Client will advise the Company immediately of any facts or circumstances which cause or which are reasonably likely to cause any representation or warranty to be false or misleading in any material respect; and

9.7.5 the Client is in full compliance with all applicable laws, regulations and standard industry practices.

9.8 **THE CLIENT SHALL AT ALL TIMES, WHETHER DURING OR AFTER TERMINATION OR EXPIRY OF THIS AGREEMENT, INDEMNIFY AND KEEP THE COMPANY INDEMNIFIED AGAINST ALL LOSSES, CLAIMS, DAMAGES, LIABILITIES AND EXPENSES (INCLUDING ALL REASONABLE LEGAL FEES) WHICH MAY ARISE IN RESPECT OF A BREACH OF, OR A FAILURE TO MEET ANY OF THE AFORESAID REPRESENTATIONS, WARRANTIES AND/OR UNDERTAKINGS IN THIS CLAUSE 9.**

9.9 The Client undertakes to notify the Company immediately of:

9.9.1 any change of address;

9.9.2 cessation of business; and/or

9.9.3 change in ownership or shareholding of the Client.

9.10 The Client acknowledges and accepts that, notwithstanding any sale of business interest, he/she/they shall remain liable in full for the settlement of the debt to the Company and

he/she/they undertake to inform the Company within 7 (seven) days and by registered mail, of any such change.

9.11 The Client hereby declares that the Client has not specifically informed the Company of any particular purpose for which the Client wishes to buy/acquire/use the Goods.

9.12 The Client hereby authorises the Company, the Client's other creditors, the Client's bank and auditors and/or credit bureaus to make credit information available to each other, and also authorises and consents to the Company drawing such credit information from any sources whatsoever regarding the Client as it deems necessary, including information of the directors, members, partners and/or trustees.

9.13 **THE CLIENT SHALL AT ALL TIMES, WHETHER DURING OR AFTER TERMINATION OR EXPIRY OF THIS AGREEMENT, INDEMNIFY AND KEEP THE COMPANY INDEMNIFIED AGAINST ALL LOSSES, CLAIMS, DAMAGES, LIABILITIES AND EXPENSES (INCLUDING ALL REASONABLE LEGAL FEES) RESULTING FROM ANY ADVICE GIVEN, RECOMMENDATIONS MADE, PRODUCTS SOLD OR USED OR ARISING FROM ANY CAUSE WHATSOEVER, AS ENVISAGED IN THE PRECEDING PARAGRAPHS, AND HEREBY WAIVES ANY SUCH CLAIM.**

#### 10. EVENTS OF DEFAULT

10.1 Without derogating from the rights of the Company in law or otherwise, an event of default shall occur should:

10.1.1 the Client fails to pay any amount to the Company on the due date thereof;

10.1.2 the Client fails to comply with any term or condition of this Agreement and fail to remedy that breach, if capable of remedy, within 7 (seven) days after being called upon to do so;

10.1.3 the Client or any person or entity that provides security for the Client ("**Obligor**") performs any act analogous to an act of insolvency specified in the Insolvency Act, 1936 or an act as defined in Section 344 of the Companies Act, 1973, read with Schedule 5 of the Companies Act, both as amended or substituted from time to time;

10.1.4 any asset deemed by the Company to be a material asset of the Client or Obligor, as the case may be, be attached by any third party with a writ of execution and should the Client fail within 14 (fourteen) Business Days of such attachment to take the necessary steps to have such attachment set aside and thereafter to pursue such steps with due diligence to a successful conclusion;

10.1.5 any judgment be granted against the Client or Obligor, as the case may be, and remain unsatisfied for a period of 7 (seven) Business Days after date of judgment or should the Client fail within 7 (seven) Business Days of such judgment to take the necessary steps to appeal against or rescind such judgment and thereafter to pursue such appeal or rescission with due diligence to a successful conclusion;

10.1.6 any order of Court, whether provisional or final, and whether voluntarily or compulsorily, be granted for the winding up of the Client or Obligor, as the case may be;

10.1.7 the Client or Obligor, as the case may be, gives notice to take steps to convene a meeting of its shareholders/directors to adopt a resolution placing it in liquidation or under business rescue in either case, whether provisionally or finally;

10.1.8 the Client or Obligor, as the case may be, enters into a compromise, composition or arrangement with its creditors generally, or any class thereof;

10.1.9 any warranty or representation made by the Client or Obligor, as the case may be, which was taken into consideration, and was materially relied upon by the Company in accepting an Order from the Client as set out hereunder or accepting the relevant security, guarantee or suretyship as collateral, be found to be untrue or incorrect in any material respect;

10.1.10 the Client or Obligor, as the case may be, becomes unable to conduct its normal course of business for whatsoever reason;

10.1.11 the Client repudiates this Agreement; or

10.1.12 if any of the following occurs in relation to the Client:

10.1.12.1 the Client carries on business either recklessly, with gross negligence, with the intent to defraud or for fraudulent purposes;

10.1.12.2 the Client carries on business or trades under insolvent circumstances; or

10.1.12.3 an application has been made to court for an administration order or appointment of a business rescue practitioner in respect of the Client.

10.2 If the Client fails to remedy such event of default (where capable of remedy) within the applicable grace period calling upon the Client to do so, or if the event of default is not capable of remedy and the Company gives notice that such event of default has occurred and the Company is exercising its rights pursuant hereto, then:

- 10.2.1 all the Client's indebtedness to the Company (whether actual or contingent) will be immediately due and payable irrespective of any terms or conditions otherwise applicable to such indebtedness;
- 10.2.2 the Company may demand and recover the payment of all amounts so declared due or deemed to be due;
- 10.2.3 the Client must pay interest, calculated at the then prevailing Prime Rate plus 3 (three) percentage points, calculated on the amount due and payable (including any unpaid interest which will be capitalized), calculated from the date of demand to the date of receipt of the actual payment;
- 10.2.4 the Company may exercise any or all of its rights under any security provided by the Client or Obligor, as the case may be;
- 10.2.5 the Company may appropriate any amounts standing to the credit of any of the Client's accounts in the Company's books in reduction or liquidation of the amounts owing to the Company;
- 10.2.6 the Company may refuse to supply further Goods and/or Services to the Client, including any Goods and/or Services subject to an Order accepted by the Company but not delivered prior to the date of exercising such discretion and further that **the Company shall not be held liable to the Client for any loss or damage which the Client may sustain as a result of the Company cancelling this Agreement or refusing to supply Goods and/or Services**; and
- 10.2.7 the Company may demand the return of any Goods not paid, in which event the Client shall return the Goods forthwith to the Company at the Client's own cost and expense.

## 11. DISPUTE RESOLUTION

- 11.1 Should any dispute, disagreement or claim arise between the Parties (the "**Dispute**") concerning this Agreement (including its terms and/or the rectification hereof, its termination and/or cancellation) and such Dispute cannot be resolved between the Parties within 15 (fifteen) days after the Dispute arose, then the Dispute shall be submitted to arbitration for resolution in accordance with the rules of the Arbitration Foundation of South Africa ("**AFSA**") by an arbitrator or arbitrators appointed by AFSA and utilising such expedited proceedings as may be available in terms of such rules.
- 11.2 The Parties hereby irrevocably agree that the decision of the arbitrator in the arbitration proceedings shall be final and binding on the Parties and will be carried into effect.
- 11.3 Unless otherwise agreed in writing by the Parties, any arbitration in terms of this clause 11 shall be held in Pretoria.
- 11.4 Nothing in this clause 11 shall prevent any Party from seeking relief on an urgent or interlocutory basis with any competent court having jurisdiction.
- 11.5 For purposes of this clause 11 and for the purposes of having any award made by the arbitrator/s being made an order of court, the Parties hereby submit to the jurisdiction of the North Gauteng High Court or any successor division thereto.
- 11.6 Notwithstanding anything to the contrary contained in this Agreement and/or in law and/or in the AFSA rules, the powers of the arbitrator(s) referred to in this clause 11 shall include the power to amend the provisions of this Agreement and to impose contractual terms on the Parties in relation to the Dispute in circumstances where the Agreement specifically makes provision for such amendment or imposition and such relief is requested by a Party, if any.

## 12. NOTICES

- 12.1 Any notice or other document to be served under this Agreement to a Party may be served at its nominated address.
- 12.2 The nominated address of the Client shall be the address of the Client specified in the Order.
- 12.3 For the Company, the nominated address shall be as follows:  
12 Byls Bridge Boulevard, Highveld Ext 73 Centurion 0157  
email: [Pieter.Badenhorst@afgri.co.za](mailto:Pieter.Badenhorst@afgri.co.za)  
Attention: Pieter Badenhorst
- 12.4 A Party shall be entitled from time to time, by written notice to the other, to vary its *domicilium* address to any other address within the Republic of South Africa, which is not a post office box.
- 12.5 All notices given in terms of this Agreement shall be in writing and any notice given by one Party to the other (the addressee) which:
  - 12.5.1 is delivered by hand during the normal business hours at the addressee's *domicilium* shall be deemed to have been received by the addressee at the time of delivery; or

12.5.2 is sent by email to the addressee's email number shall be deemed to have been received by the addressee on the 1<sup>st</sup> (first) business day after the date of transmission thereof.

12.6 Notwithstanding anything to the contrary contained or implied in this Agreement, a written notice or communication actually received by one of the Parties from the other including by way of email transmission shall be adequate written notice or communication to such Party.

### 13. **CONFIDENTIALITY**

13.1 To the full extent reasonably possible, each Party agrees and undertakes to and in favour of the other:

13.1.1 not to disclose any of the Terms and Conditions contained in this Agreement to any third party; and

13.1.2 not to utilise or disclose to any third party any trade secrets or confidential information of the other of them, which trade secrets or confidential information is not in the public domain, disclosed or made available to it under and by virtue of this Agreement and/or during the course of the implementation thereof,

other than as may be necessary for the fulfilment of its duties, functions and obligations under this Agreement.

### 14. **PROTECTION OF PERSONAL INFORMATION**

14.1 The Client hereby gives the Company permission to collect and Process the Personal Information and acknowledges that it understands the purpose for which it is required and for which it will be used.

14.2 The Company undertakes and agrees that the Client's Personal Information will only be processed by the Company to give effect to the Disclosing Purpose.

14.3 The Client warrants that it is duly authorised to disclose the Personal Information to the Company.

14.4 Only the Personal Information provided directly by the Client to the Company will be collected and Processed to give effect to the Disclosing Purpose.

14.5 The Company may disclose the Personal Information to its service providers and shall ensure that it has agreements in place with such service providers to ensure that they comply with the privacy requirements set out hereunder and as required by POPIA.

14.6 The Company will store the Personal Information securely, electronically and in a centralised data base, which, for operational reasons, will be accessible to all within the organisation of the Company on a need to know and business basis, save that where appropriate, some of the Personal Information may be retained in hard copy.

14.7 Once the Personal Information of the Client is no longer required due to the fact that the Disclosing Purpose for which the Personal Information was held has come to an end and has expired, such Personal Information will be safely and securely archived for such periods as may be required by any law applicable in South Africa. Thereafter the Company will ensure that such Personal Information is permanently destroyed.

14.8 The Company shall be obliged to provide adequate protection in relation to the Personal Information it holds and to stop unauthorized access and use of the Personal Information in its possession. The Company will, on an ongoing basis, continue to review its security controls and related processes to ensure that the Personal Information it holds remains secure. The Company shall immediately notify the Client if a breach in information security or any other applicable security safeguard occurs or where there are reasonable grounds to believe that the Personal Information has been accessed or acquired by any unauthorised person(s) and remedy any breach of a security safeguard in the shortest reasonable time.

14.9 When the Company contracts with third parties, it will impose appropriate security, privacy and confidentiality obligations on them to ensure that the Personal Information that it remains responsible for, is kept secure. The Company will ensure that anyone to whom it passes the Personal Information to agrees to treat the Personal Information with the same level of protection as set out under this Agreement.

14.10 The Client has the right to request a copy of the Personal Information that the Company holds. To do this, the Client must follow the procedure as set out under the Promotion of Access to Information Act, 2000, and POPIA Manual of the Company and specify what information is required.

14.11 The Client has the right to ask the Company to update, correct or delete Personal Information provided to the Company.

14.12 The provisions of this clause 14 shall survive the termination of this Agreement, regardless of cause, in perpetuity.

15. **CESSION AND ASSIGNMENT**

A Party shall not be entitled to assign, cede or delegate any of its rights and/or obligations in terms of this Agreement to any other person without the prior written consent of the other Party being obtained, provided that such consent shall not be unreasonably withheld or delayed in the event that such assignment, cession and delegation is to an affiliate of a Party.

16. **LEGAL PROCEEDINGS**

16.1 The Client agrees and accepts that the Company shall be entitled, in its sole discretion, but shall not be compelled or obliged to institute any legal proceedings, in connection with this Agreement. All costs and disbursements incurred by the Company, including legal costs on an attorney and own client basis in collecting monies from the Client or Obligor, as the case may be, shall be for the account of the Client.

16.2 A certificate issued and signed by any director or manager of the Company, whose authority need not be proved, in respect of any indebtedness of the Client to the Company or in respect of any other fact including (but not limited to) the fact that the Services was sold and delivered and/or rendered, shall be prima facie evidence of the Client's indebtedness to the Company.

16.3 The Client's address stated in clause 12.2 above, shall be recognised as the Client's *domicilium citandi et executandi* for the service of any court documents resulting from this Agreement. The Client's physical, email and/or postal addresses, as per this Agreement, will be deemed to be the Client's service addresses for all other documents resulting from or in terms of this Agreement.

16.4 It will not be necessary for the Company to prove that the documents referred to in clause 16.3 above were received by the Client. In the event of the Client not receiving any of the documents in clause 16.3 above, the Client must timeously acquire a duplicate copy from the Company, failing which it will be accepted that said documents were received by the Client.

16.5 All amounts due to the Company shall be deemed to be a liquid amount for purposes of provisional sentence or summary judgment.

16.6 Termination of this Agreement for any cause whatsoever shall not release a Party from any liability which at the time of termination has already accrued to the other Party or which thereafter may accrue in respect of any act or omission prior to such termination.

16.7 Except as expressly provided for in this Agreement, the rights and remedies contained herein are cumulative and are not exclusive of any other rights or remedies provided in law or otherwise.

16.8 **THE CLIENT RENOUNCES THE BENEFITS OF THE LEGAL EXCEPTIONS: NON CAUSA DEBITI (AN EXCEPTION TAKEN TO THE EFFECT THAT THERE IS NO CAUSE FOR THE OBLIGATION AND RENUNCIATION PLACES THE ONUS ON THE CLIENT TO PROVE THAT A DEBT DOES NOT EXIST), NON NUMERATE PERCUNIA (AN EXCEPTION WHICH MAY BE TAKEN BY THE CLIENT ON THE GROUND THAT THE AMOUNT THEREOF WAS NOT PAID OVER) AND ERRORE CALCULI (A REVISION OF ACCOUNTS AND ERRORS OF CALCULATION AND NO VALUES RECEIVED).**

17. **CHANGE IN LAW**

In the event of any material change in the law applicable to this Agreement or its implementation, the Parties shall, on the basis of their respective declared good faith intention to implement this Agreement for the duration hereof, discuss with each other the impact of such event(s) and seek to agree such amendments to this Agreement as may be necessitated thereby in order to account for such inconsistency but also to preserve the commercial balance between them. In the event of the failure of such discussions, the provisions of clause 11 shall apply.

18. **CONFLICT OF INTEREST**

Neither of the Parties nor any of their respective representatives, employees, agents or subcontractors shall give to, nor receive from the other, any of its affiliates or any representatives, employees, agents or subcontractors of the other any benefit, commission, fee, rebate, or any gift or entertainment of value in connection with this Agreement.

19. **SUBCONTRACTING**

Each of the Parties may subcontract any of their obligations under this Agreement to any third party, provided that in doing so it shall not in any way be relieved of any of its obligations in terms of this Agreement and shall not be entitled to any greater protection in law than it otherwise would have been entitled to had such subcontracting not been affected.

20. **NON-PARTNERSHIP**

Nothing in this Agreement shall be construed as creating a partnership or joint venture of any kind between the Parties or as constituting neither Parties as the agent of the other for any

purpose whatsoever. Neither of the Parties shall have any authority to bind the other or to contract in the name of or to create a liability against the other in any way or for any purpose.

21. **WHOLE AGREEMENT**

This Agreement constitutes the whole agreement between the Parties as to its subject matter and no agreement, representations or warranties between the Parties other than those set out herein are binding on the Parties.

22. **VARIATION**

22.1 No addition to or variation, consensual cancellation or novation of this Agreement and no waiver of any right arising from this 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.

22.2 Unless otherwise required by law, this Agreement, including any document or other notice which is required to be signed in terms of this Agreement, as well as any notice required to be delivered in terms of this Agreement, may be signed by way of an electronic signature as contemplated in the Electronic Communications and Transactions Act, 25 of 2002 ("**ECTA**"). It is specifically recorded that such signature need not be an "advanced electronic signature", as defined under the ECTA.

23. **FURTHER ASSURANCE**

The Parties shall co-operate with each other and execute and deliver to the other of them such other instruments and documents and take such other actions as may be reasonably requested of the Parties from time to time in order to carry out, evidence and confirm its rights and the intended purpose of this Agreement.

24. **SEVERABILITY OF INVALID PROVISIONS**

If any provision of this Agreement is declared to be invalid, the other provisions shall not thereby be affected or impaired and shall continue to be of full force and effect. In such event, the Parties shall seek, in good faith, to negotiate valid substitute provisions for those provisions declared to be invalid and will as nearly as possible preserve the commercial balance between them. In the event of the failure of such discussions, the provisions of clause 11 shall apply.

25. **RELAXATION**

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

26. **RIGHTS OF THIRD PARTIES**

The provisions of this Agreement are intended solely for the benefit of the Parties and their respective successors-in-title and it is not the intention of the Parties to confer any rights upon third parties.

27. **COUNTERPARTS**

This Agreement may be signed in any number of counterparts, all of which taken together shall constitute one and the same instrument.

28. **COSTS**

Each Party shall bear its own costs relating to the negotiation, drafting and execution of this Agreement and attendances incidental thereto.

29. **JURISDICTION**

This Agreement shall be governed by and construed in accordance with the laws of the Republic of South Africa and shall be subject to the exclusive jurisdiction of the Courts of the Republic of South Africa.