

STANDARD CONDITIONS OF SALE

1. These standard conditions of sale shall apply to all orders for and/or sales of product and the rendering of services by the seller to the purchaser, including all orders and or amendments thereof; as well as all deliveries and payments.
2. The seller (credit provider) sells products and renders services to purchasers (consumers) that are either:
 - 2.1 subject to the Consumer Protection Act 68 of 2008 ("the CPA"); or
 - 2.2 fall outside the ambit of the CPA.
3. The CPA contains arrangements that only apply to such purchasers subject to the CPA, which arrangements are inapplicable to purchasers falling outside the ambit of the CPA.
4. For sake of convenience these standard conditions of sale contain the following three sets of clauses:
 - 4.1 Clauses applicable to all purchasers, regardless whether they are subject to the CPA or not, to wit clauses 1 to 24 and 40 to 44;
 - 4.2 Clauses only applicable to purchasers falling outside the ambit of the CPA, to wit clauses 25 to 31; and
 - 4.3 Clauses only applicable to purchasers subject to the CPA, to wit clauses 32 to 39.
5. These three sets of clauses are clearly distinguished and the purchaser acknowledges that he/she/it is aware of this distinction.
6. The CPA is not applicable to a juristic person with assets or an annual turnover exceeding R2 million. In terms of the CPA, a juristic person includes a body corporate (for example a company or close corporation), partnership and a trust.
7. The purchaser records that it is:
 - 7.1 able to determine whether it is subject to the CPA or not and therefore able to identify which clauses are applicable to such purchaser; or
 - 7.2 alternatively, is aware that it may approach the seller for advice and confirmation of the applicability of the CPA.
8. PURCHASERS SUBJECT TO THE CPA ACKNOWLEDGE THAT THE CLAUSES APPLICABLE TO THEM MIGHT:
 - 8.1 LIMIT THE RISK OR LIABILITY OF THE SELLER;
 - 8.2 STIPULATE THE ASSUMPTION OF RISK BY THE PURCHASER;
 - 8.3 CAUSE THE PURCHASER TO INDEMNIFY THE SELLER; and/or
 - 8.4 CONTAIN ACKNOWLEDGEMENTS OF FACTS BY THE PURCHASER.
9. THE PURCHASER SUBJECT TO THE CPA ACKNOWLEDGES THAT HE/SHE/IT IS AWARE OF THE CLAUSES REFERED TO IN CLAUSE 8, AGREES TO BE BOUND BY SUCH CLAUSES AND CONFIRMS THAT HE/SHE/IT UNDERSTANDS THE CONTENTS AND IMPACT OF SUCH CLAUSES; ALTERNATIVELY HE/SHE/IT IS AWARE OF THE FACT THAT THE SELLER TENDERS TO EXPLAIN SUCH CLAUSES TO THE PURCHASER, SHOULD ANY SUCH CLAUSE BE UNCLEAR.
10. THE PURCHASER SUBJECT TO THE CPA SIGNIFIES HIS/HER/ITS KNOWLEDGE OF AND CONSENT TO SUCH CLAUSES.

TERMS AND CONDITIONS APPLICABLE TO ALL PURCHASERS

11. THE PARTIES:

- 11.1 The seller of the products with particulars as reflected on the application for credit is AGRI FOKUS (PTY) LIMITED t/a AGRI CHEMIES (Registration Number: 2001/018334/07).
- 11.2 The particulars of the purchaser are reflected on the application for credit and/or the order in question.
- 11.3 The signatories to the credit application and these terms and conditions warrant that they are duly authorised to represent their principals and conclude this agreement.
- 11.4 The purchaser confirms the legal entity and particulars recorded in the credit application. Should any of these particulars change, the purchaser shall be obliged to in writing inform the seller accordingly.

12. THE PRODUCTS:

- 12.1 The products sold from time to time are described in the order placed by the purchaser and/or the delivery note and/or invoice.
- 12.2 The seller shall be entitled but not obliged to sell and deliver products ordered verbally by the purchaser, in which event such delivery shall be binding upon the purchaser, unless the purchaser within 5 (FIVE) business days objects to such delivery.
- 12.3 Acceptance of the purchaser's order by the seller shall take place when the seller accepts such order in writing and/or by executing of the order. The place of acceptance, which shall be deemed to be the place of contracting, shall be the place where the seller accepts the purchaser's order.
- 12.4 Unless stated to the contrary, all metric weights indicated in the seller's price list or on containers indicate the net weight/volume of the products at the time of the packaging thereof and exclude the weight of such packaging.
- 12.5 In the event that an order is placed by the purchaser, such order shall constitute an irrevocable offer to purchase the products in concern and acceptance of such order/offer shall constitute a sale on the terms and conditions stipulated herein, to the exclusion of any conditions to the contrary attached to or forming part of the purchaser's order.
- 12.6 No order which has been accepted by the seller may be cancelled by the purchaser, except with the prior written consent of the seller.
- 12.7 The purchaser shall be responsible for ensuring the accuracy of any order submitted by the purchaser.

13. THE PRICES:

- 13.1 The price payable for products ordered by the purchaser shall be the seller's list price ruling at the date of acceptance of an order of the products in concern, unless the parties reach an agreement in writing, duly signed by both parties, with regard to any discount on such list price and/or a different price.
- 13.2 The said prices exclude additional costs, such as transportation. Such additional costs shall be agreed and/or stipulated separately from the purchase price.
- 13.3 Any quotation given by the seller shall be valid for a period of thirty days from date of issuing and subject to price increases, however it remains in the sole discretion of the seller to determine a shorter date for the validity of a specific quotation.
- 13.4 If a quotation is not accepted within the above period, such quotation will lapse and the purchaser will be required to request a new quotation.

14. PAYMENT OF PURCHASE PRICE:

- 14.1 Each delivery is to be considered as a separate contract and upon delivery to the purchaser, an invoice will be issued for the purchase price and the transportation charges, if applicable.
- 14.2 Unless otherwise agreed in writing between the parties, payment of the invoices shall be made within 30 (thirty) days from the date of the statement on which the invoice first appears.
- 14.3 The parties record that discounts may be granted to the purchaser as a *quid pro quo* for timeous payment, which discount will be at the seller's absolute discretion. Should the purchaser therefore fail to make timeous payment, all such discounts previously granted shall lapse and the full amount shall therefore immediately be due and payable by the purchaser. The seller shall accordingly invoice the purchaser for the discounts previously granted on a transaction.
- 14.4 In the event that the parties reach an agreement in writing in respect of payment on terms other than indicated in clause 14.2 above and the purchaser is in default to make any payment according to such agreement, the full balance due on the date of such default shall immediately become due and payable.



- 14.5 The purchaser shall be liable for default interest at the maximum rate allowed in terms of the National Credit Act 34 of 2005 ("NCA") for incidental credit on any outstanding amount, calculated from the due date for payment until payment in full, calculated daily and compounded monthly at the end of each month, unless otherwise agreed in writing.
- 14.6 Should any invoice not be paid on due date or should the seller at any time be dissatisfied with the financial position of the purchaser, the seller may refuse deliveries and may at its option enforce immediate payment for all deliveries already made. The seller shall be entitled to require of the purchaser to satisfy the seller that the purchaser will meet its obligations in respect of the past and future purchase prices. The contents of this clause 14.6 shall not prejudice any of the seller's other rights that it may have in law.
- 14.7 All payments shall first be applied to redeem the interest, then any legal costs and thereafter the capital due in respect of the sale of the product.
- 14.8 The purchase price shall be paid by the purchaser to the seller without any deduction whatsoever, free of exchange and/or set-off on or before the payment date.
- 14.9 The seller shall deliver a monthly statement of account.
- 14.10 Should the purchaser not have received the said monthly statement of account, it is obliged to inform the seller within 15 (fifteen) days of the end of any such given month and/or otherwise obtain a copy of such account.
- 14.11 If there is any dispute about the exact price payable by the purchaser to the seller, the purchase price for the product shall be the seller's standard list price for the product or similar product in effect on date of delivery of the order, which is available for inspection by the purchaser. Should the prices not yet be fixed on the date of signing the order, the seller shall furnish such prices to the purchaser as soon as they are fixed. The purchaser shall be afforded seven days thereafter to accept or reject the fixed prices.
- 14.12 The seller shall be entitled to appropriate any payment received from the purchaser to any indebtedness of the purchaser to the seller, in respect of any sale of product or default interest.
- 14.13 Should the purchaser arrange with a co-operative or any third party to make payment of any amount due to the seller by the purchaser, a levy equivalent to 3% of the total amount reflected on the invoice(s) in question shall be paid by the purchaser to the seller, unless otherwise agreed in writing.

15. DELIVERY:

- 15.1 Delivery shall be affected at the seller's premises, unless otherwise agreed in writing and subject to this clause.
- 15.2 Unless otherwise agreed, delivery shall be affected when the products are placed upon the wagon, carriage or vehicle of the carrier in the event that such carrier is contracted by the purchaser. Such carrier shall be the purchaser's agent and delivery to the carrier shall be deemed to be good and sufficient delivery to the purchaser.
- 15.3 In the event that the parties agree that such carrier is contracted by the seller, delivery shall be affected when the products are off-loaded at the premises indicated on the order in question.
- 15.4 Any remuneration payable in respect of the transportation of the products is to be paid prior to delivery, except in the event that the parties agree otherwise in writing, or the products are being purchased on an approved debtor's account, then the payment will be due when the purchase price of the products is due.
- 15.5 The purchaser agrees to ensure that the purchaser or an authorised individual shall be present to accept delivery and sign on the delivery notice and warrants the authority of such individual to accept and sign.
- 15.6 The signing of a delivery notice by the purchaser shall constitute acceptance of the contents of the delivery notice, subject to the further terms of this agreement. However, regardless whether the purchaser signs the delivery notice, it shall record and furnish any dispute as to the contents thereof and/or of the delivery in writing to the seller within 5 (five) business days of delivery, failing which it shall constitute prima facie acceptance of the contents of the delivery notice and/or delivery. The seller records that the limitation of a 5 (five) days' period is reasonably necessary to enable the seller to timeously investigate, verify and determine any such dispute.
- 15.7 For the same reasons, the seller shall not be liable for any damage to products or packaging caused during delivery, unless the seller is likewise informed in writing within 5 (five) business days after delivery.

16. QUALITY AND TRADEMARKS:

- 16.1 The seller shall ensure that the products comply with the description thereof, as may legally be required.
- 16.2 The use of any trademarks under which the product is being supplied is conditional upon resale being made in the seller's original packaging.

17. OWNERSHIP AND RISK:

- 17.1 Ownership of the product shall only pass to the purchaser against payment of the full purchase price.



Should the purchaser default in making timeous payment, the seller shall be entitled to return of the product, following due process.

- 17.2 Risk of loss or damage to the products shall pass to the purchaser upon delivery. The purchaser shall take all reasonable precautions to ensure the safekeeping, safe storage and safe handling of the products.

18. BREACH:

- 18.1 The seller is entitled to cancel this agreement summarily if any judgment is granted against the purchaser or if the purchaser commits any statutory act of insolvency.
- 18.2 If the purchaser is in breach of any of the terms and conditions stipulated herein and/or otherwise agreed between the parties, then the seller shall be entitled to claim immediate payment and/or performance by the purchaser of all the purchaser's obligations, whether or not the due date for payment and/or performance shall have arisen, in either event, without prejudice to the seller's right to terminate the agreement and/or claim damages. The foregoing is without prejudice to such other rights as the seller may have at law and subject to sections 129 and 130 of the NCA, should the NCA be applicable.
- 18.3 In terms of section 45 and 28 of the Magistrates' Court Act, 32 of 1944, the purchaser consents to the jurisdiction of the Magistrates' Court (District Court or Regional Court) in respect of any legal proceedings resulting from this agreement. However, the seller shall be entitled to refer any dispute emanating from this agreement to a South African High Court with jurisdiction.

19. NOTICES AND DOMICILIA:

- 19.1 The parties choose as their *domicilium citandi et executandi* their respective addresses set out in this clause for all purposes arising out of or in connection with this agreement, at which addresses all the processes and notices arising out of or in connection with this agreement, its breach or termination may validly be served upon or delivered to the parties.
- 19.2 For the purposes of this agreement the seller's address shall be Agri Chemies Office, Noord Street, Koppies, Free State Province, and the purchaser's address shall be the addresses as stipulated in clause 15 of the Credit Application, alternatively the email address utilised by the purchaser in communicating with the seller.

20. SOUTH AFRICAN LAW:

The South African law shall apply to this agreement and all subsequent transactions.

21. FORCE MAJEURE:

- 21.1 The seller shall not be liable for any loss, damage or injury occasioned by the purchaser by default in the performance of any obligation under these Standard Conditions of Sale if the default is caused by any occurrence whatsoever which is not within the control of the seller, including but not limited to industrial action, accident, power failure, breakdown of plant or machinery, order of any government authority, and, subject to clause 21.2 below, shortage of raw materials required for or in connection with the manufacture of the products. The seller will give the purchaser written notice of the occurrence.
- 21.2 In the event that the seller is prohibited or delayed to deliver the products to the purchaser at the agreed time by any event contemplated in clause 21.1 above, the seller may, as soon as possible after advising the purchaser thereof in writing, cease, postpone or decrease deliveries to the extent the seller deems fit.

22. CLAUSE HEADINGS:

The clause headings in these Standard Conditions of Sale are inserted for reference purposes only and shall not be used in the interpretation thereof.

23. CESSION OF CLAIMS AS SECURITY:

- 23.1 The purchaser hereby cedes all the book-debts and/or other claims currently due to him/her/it and which may become due to him/her/it in the future, to the seller as security for the due and proper fulfilment of the purchaser's obligations towards the seller arising from whatsoever cause with regard to any amount already due and payable or which may become due and payable in the future. This cession is not limited to but includes any amount due to the purchaser arising from the sale of any agricultural products.
- 23.2 The purchaser shall at its own cost deliver any grain crops cultivated, at the closest SAFEX accredited silo to the farm of the purchaser and the purchaser will be obliged to deliver the silo certificate to the seller. The seller may, at any time, through any of its officials or its nominee(s) gain access to the farm and/or



land on which the grain crops is cultivated, in order to exercise any of the following rights:

- 23.2.1 to inspect or cause to be inspected the crops at any time;
- 23.2.2 should the seller consider it necessary:
 - 23.2.2.1 to arrange for the protection of the crops against any possible risks; and
 - 23.2.2.2 to harvest the crops and deliver it to a SAFEX accredited silo or any other nominated silo;
 - 23.2.2.3 the cost of which will be borne by the purchaser.

24. GENERAL CLAUSES:

- 24.1 It is recorded that orders shall be accepted and the products be supplied subject to these terms and conditions indicated herein.
- 24.2 This agreement records the entire agreement between the parties. No variation, amendment, addition or consensual cancellation of this agreement or any provision or term hereof or any other document issued or executed pursuant to or in terms of this agreement, shall be binding or have any force or effect, unless reduced to writing and signed by or on behalf of the parties.
- 24.3 No relaxation or indulgence, including the acceptance of late payments by the seller, shall be deemed to be a waiver by the seller of any or their rights to enforce strict compliance by the purchaser of any of its obligations in terms hereof, nor is such relaxation or indulgence to be deemed a novation of any of the terms and conditions of this agreement.
- 24.4 No representative, agent or salesman of the seller has any authority to vary these conditions or to make any representation on the seller's behalf and no purported variation of these conditions shall be of any effect unless it is in writing and duly signed by an authorized representative of the seller.
- 24.5 If any clause or term of this agreement should be invalid, unenforceable, defective or illegal for any reason whatsoever, then the remaining terms and provisions of this agreement shall be deemed to be severable therefrom and shall continue to be of force and effect.
- 24.6 The purchaser may not cede or assign any of his rights or obligations hereunder without prior written consent of the seller.
- 24.7 Any reference to the NCA and/or the CPA shall not by such reference and/or consensus and/or incorporation render such legislation applicable to this agreement and/or the purchaser, should such legislation not otherwise so be applicable by operation of law.

CLAUSES APPLICABLE SHOULD PURCHASER NOT BE SUBJECT TO THE CPA

25. WARRANTY AND RETURNS:

- 25.1 Unless otherwise stated in any written guarantee given by the seller, the sale of the product shall be free from all conditions and warranties, whether statutory, under the common law or otherwise as to quality, fitness for any purpose and/or merchantability thereof.
- 25.2 Any recommendations or advice given by or on behalf of the seller are given in good faith but without liability on the part of the seller, and the usage or application of the product shall be entirely the responsibility of the purchaser, without reliance on any statement of the seller.
- 25.3 The seller shall not be liable for any special and/or consequential damages suffered by the purchaser. The seller's liability shall in any event and in all circumstances where the seller might be liable, be limited to replacement of defective product or repayment of the purchase price, at the seller's discretion.
- 25.4 It is recorded that, once the product has been sold and delivered as ordered, such product is non-returnable except in the event that the parties agree otherwise in writing, duly signed by both parties, in respect of such return.

26. LODGING OF CLAIMS:

- 26.1 The purchaser shall be entitled to inspect the product immediately upon receipt thereof and shall inform the seller in writing of any shortages, faulty product or defects in the product within 5 (five) business days from the date of delivery.
- 26.2 In the event that the purchaser fails to give the notice contemplated in clause 26.1 above, the quantity and quality of the delivered product shall be prima facie regarded to have been delivered free from defects in accordance with these Standard Conditions of Sale.
- 26.3 In the event the purchaser gives notice to the seller in accordance with clause 26.1 above and the seller is satisfied that the product is defective, then the seller shall replace a portion of the product with product of the same quantity, subject to the availability of the specific product.

27. DELIVERY:



- 27.1 The seller does not guarantee delivery on any specified date but will endeavour to effect delivery as near as possible to the date stated on the order and/or acceptance thereof. The purchaser shall not be entitled to repudiate or withdraw from the sale on the ground of late or non-delivery, nor to place the seller in mora in regard to delivery, nor shall the seller be liable for any damages suffered by the purchaser in event of late delivery by the seller.
- 27.2 The product reflected on the delivery note shall be regarded to be an agreed amendment to the order in question, to the extent that it differs from such order, unless the purchaser refuses receipt thereof in writing within 5 (five) days from receipt thereof.



28. LIABILITY AND WAIVER:

- 28.1 The purchaser waives any claim for losses, damages or liability that he may have against the seller arising from, but not limited thereto, allegations that the product is not fit for the purchaser's purposes.
- 28.2 Subject to the contents of clause 28.1 above, the seller shall not be liable for any contractual, delictual and/or consequential damages, including but not limited to loss of profit, loss of production and loss of market share arising from any alleged deficiency and/or disability of the product and/or any late delivery thereof. The seller's liability will under all circumstances and notwithstanding how it arises, be limited, at the seller's sole discretion, to the replacement of the particular product at no charge to the buyer.
- 28.3 The purchaser further indemnifies the seller against:
 - 28.3.1 Any negligent and/or wilful act or omission by the purchaser or his employees or contractors with regard to the product or the use thereof;
 - 28.3.2 Any losses, damages (including consequential damages) or liability caused by or arising from, without limitation, the use, transport or storage of the product after delivery thereof to the purchaser;
 - 28.3.3 Any losses, damages (including consequential damages), death of or injury to third parties arising from the purchaser's omission to furnish such third parties with information regarding, without limitation, inherent dangers, correct use, storage and disposal of the product and/or the purchaser's omission to take all reasonable and necessary steps to prevent such events during the use, storage and disposal of the product by the purchaser; and
 - 28.3.4 Any losses, damages (including consequential damages) caused by or arising from any breach of any warranty.

29. WARRANTY BY PURCHASER IN RESPECT OF PRODUCT:

The purchaser warrants that he/she/it is acquainted with the use, characteristics and inherent dangers related to the product and furthermore warrants that he/she/it has complied with all statutory requirements and is in possession of the necessary permits, authorisations and official documents required for the handling, purchase, storage, transport, treatment, use and/or disposal of the product (if any).

30. FAILURE TO DISPUTE ACCOUNTS:

Should the purchaser fail to dispute any entry on the seller's monthly account within 90 (ninety) calendar days of the date of such account, the entries shall be accepted as correct and constitute conclusive proof of any such entry.

31. LEGAL COSTS:

Should the seller institute legal action against the purchaser pursuant to any sale agreement, the purchaser shall be liable for payment of the legal costs of the seller on an attorney and own client scale.

CLAUSES APPLICABLE SHOULD THE CPA APPLY TO THE PURCHASER

32. DELIVERY:

- 32.1 The seller shall not be liable for any damages suffered by the purchaser resulting from late delivery of goods, save to the extent that the seller may be liable for such losses in terms of the provisions of section 47 of the CPA in the event of any shortages of the products.
- 32.2 Should any product be delivered erroneously, the purchaser shall within 10 (ten) business days after the delivery, inform the seller accordingly, in which event the purchaser may retrieve such erroneous delivery within 20 (twenty) business days.

33. QUALITY:

In the event of any allegation that the goods are unsafe or defective, the seller shall not be liable for any damages caused where such characteristic, failure, defect or danger did not exist at the time of delivery of the products by the seller to the purchaser.



34. INDEMNITY:

The parties agree that, given the purpose for which the goods are purchased, consequential damages in the event of breach of contract may be astronomical. Should the seller accept liability for such consequential damages, it will have a substantial impact on the cost of the goods for the purchaser. The purchaser consequently elects to limit the seller's liability for all forms or breach of contract to the replacement of the products, free of charge, or repayment of the purchase price paid by the purchaser (at the election of the purchaser).

35. LIMITATION OF THE SELLER'S LIABILITY:

- 35.1 The seller shall ensure that the delivered product corresponds with the label description prescribed by law.
- 35.2 The purchaser undertakes to make himself familiar with all relevant characteristics of the product, as described in the seller's catalogue, available from the seller's agent and/or website, within 5 (five) days of the delivery date, and which description shall be deemed sufficient disclosure of all patent and latent characteristics of the product and the seller in addition tenders to address any further enquiries in this regard.
- 35.3 The product shall comply with all statutory quality requirements specifically applicable to product.
- 35.4 The seller shall therefore not be liable for any non-compliance in respect of the aspects set out in paragraph 35.2.

36. SHORTAGES:

- 36.1 If any shortages of product occur for any reason whatsoever:
 - 36.1.1 The seller shall take reasonable steps to inform the purchaser thereof as soon as it is practicable to do so;
 - 36.1.2 The seller shall offer other product to the purchaser at the list price of such other product; and
 - 36.1.3 The purchaser shall not under any circumstances have any claim against the seller of whatever nature resulting from such shortages of product, should such shortages be beyond the control of the seller.
- 36.2 In addition, the future supply and availability of product ordered by the purchaser remain dynamic, unpredictable and beyond the control of the seller. The seller shall therefore not be liable for any early, late, short or insufficient deliveries and/or inability to deliver.
- 36.3 The purchaser shall familiarise himself and comply with all statutory prescriptions in the handling of the product.

37. COOLING-OFF PERIOD:

Should any transaction be the result of direct marketing by seller's agent and should such transaction be subject to the CPA, the purchaser shall have the right to terminate the transaction in writing, within 5 (five) business days after conclusion of the transaction or 5 (five) business days after delivery of the product. The purchaser shall at its own cost and risk return any product already delivered. The seller shall refund any payment made by the purchaser within 15 (fifteen) business days after such return or, when no product had been delivered, 15 (fifteen) business days after receiving notice of the rescission.

38. LEGAL COSTS:

Should any party incur legal costs to enforce the agreement, the unsuccessful party shall pay the legal costs of the successful party on an attorney-and-client scale.

39. PLAIN LANGUAGE:

The purchaser confirms that it is an experienced farmer/businessman/businesswoman with at least such average business and literacy skills as could be expected from such consumer. The purchaser therefore confirms that this agreement in plain language is and understandable, alternatively confirms that he/she/it (the purchaser) is aware of the right and opportunity to have any clause explained by the seller.



APPLICATION OF TERMS AND CONDITIONS

40. CONDITIONS OF SALE APPLICABLE TO ALL TRANSACTIONS:

- 40.1 The purchaser hereby confirms that he/she/it is aware of the above terms and conditions, that he/she/it is authorised to sign this agreement and that he/she/it has had sufficient opportunity to study and consider the terms and conditions prior to signing the agreement, and by signing the agreement he/she/it confirms and agrees that he/she/it has read, understood and accepted the terms and conditions of this sale agreement, and which terms and conditions will apply to all orders and purchases on the purchaser's account or otherwise.
- 40.2 The parties agree that for an indefinite period any subsequent transactions concluded between them shall be governed by these terms and conditions, which shall be incorporated into each such transaction by reference.

41. BINDING AGREEMENT:

The seller offers to contract with the purchaser on the terms and conditions contained in this sale agreement. With any purchases, the purchaser accepts such terms and conditions and a valid and binding agreement shall then come into existence.

42. INCORPORATION BY REFERENCE:

It is expressly agreed that the terms and conditions stipulated herein are incorporated in any sales made by the seller to the purchaser.

43. LIMITATION OF RISKS:

The purchaser confirms that this agreement limits the seller's liability, transfers risk and liability to the purchaser and contains indemnities and factual admission by the purchaser, which is accepted as such.

44. ARBITRATION:

- 44.1 The seller shall at their sole discretion be entitled but not obliged to refer any dispute arising from the sale agreement for adjudication by arbitration in accordance with this clause 44.
- 44.2 Such arbitration must be held:
 - 44.2.1 at Johannesburg or such other place nominated by the seller;
 - 44.2.2 in the manner to be prescribed by the arbitrator in accordance with clause 44.5 below;
 - 44.2.3 promptly, with the view to finalise the same within 45 (forty five) business days from the date on which the dispute is referred for arbitration or such longer period as determined by the arbitrator; and
 - 44.2.4 subject to the provisions of the Arbitration Act 42 of 1965, as amended, save for where this clause 46 states otherwise.
- 44.3 The seller shall nominate 3 (three) possible arbitrators by written notice to the purchaser, which notice may be forwarded to the purchaser by facsimile or email to the facsimile number and/or email address nominated in clause 15 of the Application for Credit. The persons nominated as such shall be practising advocates practising as such for a period of at least 10 (ten) years and/or retired judges.
- 44.4 The seller shall, within 5 (five) business days from the date of transmission of such written notice, nominate 1 (one) arbitrator from the ranks of the said 3 (three) nominated arbitrators, to act as arbitrator in the matter, failing which the seller shall be entitled to nominate the arbitrator.
- 44.5 The parties shall within 5 (five) business days from the date of nomination of the arbitrator in accordance with clause 46.4 or as soon as possible thereafter on a date suitable to the arbitrator, schedule a pre-trial conference with the arbitrator to determine:
 - 44.5.1 a timetable within which the exchange of such pleadings prescribed by the arbitrator and discovery must take place;
 - 44.5.2 when the arbitration will take place;
 - 44.5.3 the manner in which and the timeframe within which a joint trial bundle must be made available to the arbitrator; and
 - 44.5.4 the manner in which testimony must be recorded.



- 44.6 The parties shall pay the costs related to the premises where the arbitration will be held as well as the recording and transcription of the arbitration proceedings in equal parts, subject to clause 44.8 below.
- 44.7 The parties further irrevocably agree that the decision of the arbitrator in such arbitration proceedings will be final and binding on them, and that there will be no right appeal in respect of such decision and that either party will be entitled to have such decision / award made an order of any competent court.
- 44.8 The arbitrator shall be entitled to make an order as to costs as he may deem fit.

