

NU-PRO COMMODITIES (PTY)LTD

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GENERAL TERMS AND CONDITIONS OF TRADE

between

NU-PRO COMMODITIES (PTY) LTD

(Registration No. 2004/029545/07)

("Nu-Pro")

and

the party whose particulars are set out in the specific agreement into which these General Terms and Conditions of Trade are incorporated.

The party with whom Nu-Pro concludes an agreement incorporating these General Terms and Conditions of Trade by reference shall hereinafter be referred to as the "**Counterparty**".

Nu-Pro and the Counterparty are collectively referred to as the "**Parties**" and individually as a "**Party.**"

1. NATURE OF THE AGREEMENT BETWEEN THE PARTIES

- 1.1 This document sets out the general terms and conditions of trade applicable between the parties ("general terms").
- 1.2 The parties shall from time to time after the signature date sign further documentation containing specific provisions relating to the periodic purchase and sale of certain agricultural products ("commodities") either by Nu-Pro from the Counterparty, or by the Counterparty from Nu-Pro, as the case may be ("specific terms"). The specific terms shall, *inter alia*, set out the commodities, the quality and quantity of the commodities, the date on which and the place where the commodities are to be delivered, the purchase price and the payment terms of the commodities to be purchased or sold by Nu-Pro. The specific terms shall be effective from the date specified in the specific terms.

- 1.3 The provisions of SAGOS 1 VERSION 9 (“SAGOS terms”) shall, unless specified otherwise in the general terms and/or the specific terms, be incorporated in the agreement, by reference thereto.
- 1.4 The general terms and any amendments and/or additions made thereto by Nu-Pro from time to time, read together with the specific terms (as agreed between the parties in terms of clause 2) and the SAGOS terms shall constitute the entire agreement between the parties (“the agreement”). The general terms are available at Nu-Pro’s office with the address as stipulated in clause 9.1 and its webpage www.nupro.co.za. The said amendments and/or additions to the general terms from time to time, if applicable, shall also be available on the said webpage. Any such amendments and/or additions to the general terms shall be incorporated in the agreement by reference thereto.
- 1.5 The Counterparty hereby acknowledges and represents to Nu-Pro that it has read the SAGOS terms and that it has full knowledge and understanding thereof.
- 1.6 The parties hereby agree that in the event of any conflict between the provisions of the general terms and:
- 1.6.1 the SAGOS terms, the provisions of the general terms shall prevail; and
- 1.6.2 the specific terms, the provisions of the specific terms shall prevail.
- 1.7 All blank spaces in the SAGOS terms shall be deemed to be provided by way of the relevant information contained in the specific terms. In the absence of any specific terms for the completion of any blank spaces in the SAGOS terms, such provisions are deemed to be irrelevant for purposes of the agreement.

2. SPECIFIC TERMS

- 2.1 The parties agree that the specific terms may be agreed verbally over the telephone and/or by exchange of written communications in the form of, *inter alia*, letters and/or WhatsApp messages and/or electronic mail and/or verbally. For the avoidance of doubt, confirmations via WhatsApp’s are not limited to but include “read receipt” and “double tick” indications which shall constitute conclusive proof of delivery of the applicable message and/or document.

2.2 Conclusion of the specific terms by telephone:

2.2.1 In the event of the specific terms being agreed via the telephone and/or verbally, the specific terms shall be deemed to have been concluded on the date and at the time when the conversation occurred and at the place at which Nu-Pro accepts the Counterparty's offer to conclude such specific terms. Confirmation of the specific terms agreed in terms of this clause 2.3.1 shall be reduced to writing, signed and forwarded by Nu-Pro to the Counterparty by e-mail, alternatively by courier ("trade confirmation"). The Counterparty shall forthwith on receipt of the trade confirmation, sign the specific terms recorded therein and e-mail the trade confirmation back to the Nu-Pro e-mail address from which it originated, or alternatively, email a copy thereof to Nu-Pro by no later than 72 (seventy two) hours from receipt by the Counterparty of the trade confirmation and simultaneously dispatch the original to Nu-Pro's *domicilium* address set out in clause 9.1 via courier within five days after signature thereof by the Counterparty.

2.2.2 The parties hereby acknowledge and agree that any failure by the Counterparty to sign and return the trade confirmation as set out in clause 2.3.1, shall constitute a breach hereof but shall have no effect on the validity of the specific terms agreed telephonically and/or verbally between the parties, which agreement shall in the event that the specific terms were agreed upon telephonically, be evidenced by *inter alia* the trade confirmation and/or the contents of the electronic recording of the relevant telephone discussion.

2.2.3 The Counterparty hereby irrevocably consents to all telephone discussions between it and Nu-Pro after the signature date being recorded electronically and further irrevocably consents to the utilization of any such electronic recordings by Nu-Pro as evidence in any proceedings resulting from a dispute between the parties.

2.3 Conclusion of the specific terms by e-mail:

2.3.1 In the event that Nu-Pro –

2.3.1.1 receives an offer from the Counterparty to purchase or sell commodities, as the case may be, via an e-mail sent to one of Nu-Pro's designated e-mail addresses as advised to the Counterparty in writing from time to time, Nu-Pro

shall in its sole and absolute discretion be entitled to either accept or reject such offer by replying to that effect to the e-mail address from where the Counterparty's offer was received ("return e-mail"). Should Nu-Pro accept such offer, then the specific terms shall be deemed to have been concluded at the time when the Nu-Pro return e-mail containing the Nu-Pro acceptance leaves Nu-Pro's mail server, as reflected in the relevant records and logs of Nu-Pro;

2.3.1.2 wishes to purchase commodities from or sell commodities to the Counterparty, Nu-Pro shall send an e-mail to the Counterparty stipulating the specific terms on which Nu-Pro offers to purchase or sell, as the case may be, such commodities. The Counterparty shall within the time period specified by Nu-Pro (or such other date as the parties may agree in writing), send a return e-mail accepting or rejecting Nu-Pro's offer. Should the Counterparty elect to accept Nu-Pro's offer, the specific terms shall be deemed to have been concluded at the time when the Counterparty's return e-mail enters the Nu-Pro mail server, as reflected in the relevant Nu-Pro records and logs;

2.3.1.3 does not receive an email from the Counterparty intended for electronic contract formation of the specific terms due to power failure, computer breakdown, or for any other reason not within the control of Nu-Pro, Nu-Pro shall not be held liable for any loss, costs and/or damages suffered by the Counterparty as a result of such failure, it being specifically recorded that it is the Counterparty's responsibility to ensure and verify that Nu-Pro received the electronic mail. The Counterparty hereby indemnifies Nu-Pro, its directors, employees and representatives against, any loss, costs and/or damages that the Counterparty may suffer as a result of or arising from late or no receipt of any electronic mail by Nu-Pro.

2.3.2 For purposes of clause 2.4, and for the avoidance of doubt, it is recorded, that the use of an electronic signature is not required for validly concluding the specific terms via email.

3. SECURITY

Nu-Pro shall at its sole election and discretion be entitled to demand from the Counterparty, at the cost of the Counterparty, security to its satisfaction in the form of a deposit, a bank guarantee, or such other security as Nu-Pro may deem fit as a suspensive condition (in Nu-

Pro's favour) of any agreement between it and the Counterparty. Such suspensive conditions (if applicable) and the date by which it needs to be fulfilled shall form part of the specific terms.

4. PAYMENT TERMS

Unless the specific terms expressly provide otherwise –

- 4.1 either Nu-Pro or the Counterparty (as the case may be) selling the commodities ("seller") shall invoice the other of them ("purchaser") the purchase price for the commodities stipulated in the relevant specific terms ("purchase price");
- 4.2 the purchase price shall be exclusive of any value added tax levied in terms of the Value Added Tax Act, No. 89 of 1991 (as amended) and/or any other statutory levies, duties or taxes that may be payable in respect of the commodities concerned;
- 4.3 should the Counterparty fail to pay any amount due in terms of this agreement on due date therefor, Nu-Pro shall be entitled at its election to charge interest on such overdue amount(s). Interest shall be calculated from the due date until the date of payment, at 24% per annum, compounded monthly in arrear;
- 4.4. Nu-Pro shall be entitled to set-off any amount(s) owing by it to the Counterparty against any amount(s) owing by the Counterparty to Nu-Pro. Such amounts owing by the Counterparty to Nu-Pro shall not be limited to but include any damages and/or losses as referred to in clauses 7.2, 7.3, 7.4 and 7.5.
- 4.5. in the event that any dispute arises out of the provisions of this clause 4, a certificate signed by any director of Nu-Pro, shall be final and binding on the parties.
- 4.6 All payments to be made in terms hereof will only be made by electronic transfer into the following bank account:

4.6.1 Nu-Pro:

Bank:	Standard Bank of South Africa Limited
Branch:	Bethlehem
Account number:	040705838
Branch code:	055 033

4.6.2 the Counterparty:

The bank account with the particulars as stipulated in the specific terms.

5. PASSING OF OWNERSHIP AND RISK

5.1 Risk in and to the commodities purchased and/or sold in terms of this agreement shall be regulated, by the SAGOS terms.

5.2 Notwithstanding the passing of risk in the commodities as set out in 5.1, it is hereby recorded and agreed that ownership in the products shall remain vested in the party selling the commodities until the purchase price in respect of any such commodities has been paid in full by the party purchasing the commodities.

6. WARRANTIES AND INDEMNITY

6.1 The Counterparty hereby warrants in favour of Nu-Pro that the quality of the commodities acquired by Nu-Pro from the Counterparty in terms of this agreement shall at all times comply with the minimum quality standards and classes determined in the Agricultural Product Standards Act, No. 119 of 1990 (as amended).

6.2 Other than as may be set out in this agreement, Nu-Pro does not make any representations, nor give any warranties (whether express, implied in law or residual) or guarantees of any nature whatsoever in relation to the commodities supplied by Nu-Pro in terms of this agreement.

6.3 Without prejudice to any of the rights of Nu-Pro at law or in terms of any other provision of this agreement, the Counterparty hereby indemnifies Nu-Pro and its directors against all actual or contingent losses, liabilities, damages, costs (including legal costs on the scale as between attorney and own client and any additional legal costs) and expenses of any nature whatsoever which Nu-Pro may suffer or incur as a result of or in connection with any breach of this agreement by the Counterparty, including without limitation, any failure on the part of the Counterparty to comply with any warranty provided in favour of Nu-Pro in terms of this agreement.

7. BREACH

7.1 Should the Counterparty be in breach of any of the terms and conditions of the agreement, Nu-Pro shall, without prejudice to any of its other rights and with immediate effect, be entitled to:

7.1.1 cancel this agreement and claim damages from the Counterparty; or

7.1.2 claim specific performance of the Counterparty's obligations, whether or not due for performance, as well as damages.

7.2 The Counterparty acknowledges that he/she/it is aware that Nu-Pro will sell and/or commit the commodities or any portion thereof in terms of this agreement and that considerable loss may be suffered should the commodities not be delivered to Nu-Pro in accordance with the provisions of this agreement. The Counterparty further acknowledges that he is aware that Nu-Pro will probably be obliged to purchase substituting products for delivery to third parties under such circumstances and that damages and losses may be suffered as a result thereof.

7.3 Without prejudice to any of Nu-Pro's rights, the Counterparty acknowledges that in the event of a breach of any of the terms and conditions of this agreement, the Counterparty shall be liable for any and all consequential damages, including the damages referred to in clause 7.2 above, and undertakes to pay damages to Nu-Pro so as to compensate Nu-Pro for any such damage or loss.

7.4 The damages and/or losses referred to in clauses 7.2 and 7.3 will not be limited to but include the liquidation of any SAFEX positions. The buyout costs will be based on the difference between the volumes of the commodities as agreed upon between the parties and the actual volume of the commodities delivered by the Counterparty. It is agreed that such costs will be payable regardless of whether the short delivery results from an event of force majeure. The amount of such damages shall be calculated as follows, at Nu-Pro's discretion:

7.4.1 The prevailing SAFEX price of the applicable commodity on the date of the breach plus the applicable transport differential; or

7.4.2 The actual cost incurred by Nu-Pro to procure the difference between (a) the

volume of the commodities as agreed upon between the parties and (b) the actual volume of the commodities delivered by the Counterparty. Such actual cost shall be SAFEX related; and

7.4.3 Any additional losses suffered by Nu-Pro not limited to but including the recovery of brokerage fees, basis loss and margins resulting from the liquidation of SAFEX positions.

7.5 The Counterparty will make payment of the damages and/or losses referred to in clauses 7.2, 7.3 and 7.4, immediately upon demand by Nu-Pro.

7.6 The Counterparty shall be liable to Nu-Pro for any delay in performance or non-performance of its/his/her obligations in terms of the agreement to the extent that such delay or non-performance is caused by any act of God, action by government, strike, explosion, floods, riot, war, pandemic, drought, accident, embargo, legislation, civil commotion, unrest or disturbances or any other cause or contingency. Upon the occurrence of a force majeure event the Counterparty shall use all reasonable endeavours to mitigate the effects of the force majeure event. For the avoidance of doubt, the Counterparty shall remain liable to Nu-Pro for all its obligations and performances in terms of the agreement, regardless of an event of force majeure. .

8. ARBITRATION

8.1. It is specifically agreed that the dispute resolution provisions contained in the SAGOS terms shall be excluded from the agreement between the parties.

8.2 In the event of any dispute or difference arising from the agreement, then such dispute or difference will (unless interim and/or urgent relief is sought from a court of competent jurisdiction) be referred to arbitration.

8.2 The arbitrator, in the absence of agreement between the parties, shall be appointed by the Arbitration Foundation of South Africa ("AFSA").

8.3 The arbitration shall be conducted under the auspices and in accordance with the Commercial Rules of AFSA.

8.4 Notwithstanding anything to the contrary contained in this Agreement or stipulated by AFSA, the arbitration will be held in Bethlehem with a view to achieving an expeditious

result. Furthermore, the arbitration will be conducted *in camera*, the Parties and the participants in the arbitration being obliged to maintain the utmost confidentiality with regard to all matters relating thereto or arising therefrom, save as may otherwise be expressly and peremptorily required by law.

8.5 The provisions of this clause 8:

8.5.1 constitute an irrevocable consent by the parties to any of the proceedings contemplated therein and none of the parties shall be entitled to withdraw from the provisions of this clause 8 or claim under any such proceedings that it is not bound by the provisions of this clause 8 or subject to such proceedings; and

8.5.2 are severable from the remainder of the agreement and shall remain of full force and effect, notwithstanding any termination, cancellation, invalidity or alleged invalidity of the agreement for any reason whatsoever.

8.6 The receipt by any party of a notice calling for arbitration in terms of this clause 8 shall constitute the service of a process for the purposes of interruption of prescription in terms of Section 15 of the Prescription Act No 68 of 1969.

9. NOTICES

9.1 Nu-Pro chooses its *domicilium citandi et executandi* for the purposes of the giving of any notice, the serving of any process and for any other purpose arising from this agreement, as follows –

Physical address: 2 KOEBERG AVENUE
GROENVOERLANDE
BETHLEHEM
9700

Telephone: +27(0)58 050 0990

9.2 The Counterparty chooses its *domicilium citandi et executandi* for purposes of the giving of any notice, the serving of any process and for any other purpose arising from this agreement, the physical address, email address and telephone number stipulated in the applicable agreement to which these general terms are incorporated.

- 9.3 Each of the parties shall be entitled from time to time, by written notice to the other, to vary its *domicilium* to any other address within the Republic of South Africa which is not a post office box or poste restante.
- 9.4 Save for anything to the contrary contained herein, every notice, consent or other communication required or permitted hereunder from either party shall be in writing.
- 9.5 It shall be sufficiently given or transmitted if and when –
- 9.5.1 hand delivered to the other party at its *domicilium* address or at such other address as the party may have designated in writing;
 - 9.5.2 transmitted by means of email, subject to the provisions set out in the agreement; or
 - 9.5.3 deposited in the mail, duly registered per postage pre-paid for prompt delivery and addressed to the other party at his *domicilium* address or at such other address as the addressee may have designated in writing.
- 9.6 Any notice deposited in the mail in terms of this sub-clause shall be deemed to have been delivered on the seventh business day after the date of posting.

10. ASSIGNMENT

The Counterparty shall not cede any of its rights or delegate any of its obligations in terms of this agreement to any third party without the prior written approval of Nu-Pro, which approval will not be unreasonably withheld or delayed.

11. GOVERNING LAW AND JURISDICTION

- 11.1 This agreement between the parties (including its validity, existence and implementation, the interpretation and application of its provisions, the respective rights and obligations of the parties in terms of and arising out of the conclusion, breach and termination of the provisions of this agreement) shall in all respects be subject to the laws of the Republic of South Africa from time to time.
- 11.2 Subject to clause 8, the parties hereby consent and submit to the nonexclusive

jurisdiction of the of the High Court of the Republic of South Africa for the purpose of all or any legal proceedings arising from or concerning this agreement.

12. GENERAL

- 12.1. If any provision of this agreement becomes invalid or unenforceable due to a subsequent change in legislation, such provision shall be deemed to be *pro non scripto*, but without affecting, impairing or invalidating any of the remaining provisions of this agreement which shall continue to be of full force and effect.
- 12.2. Save as otherwise provided for herein, no addition to or variation, novation or agreed cancellation of any provision of this agreement shall be binding upon the parties unless reduced to writing and signed by or on behalf of the parties.
- 12.3. No indulgence or extension of time which a party ("grantor") may grant to the other shall constitute a waiver of or, whether by estoppel or otherwise, limit any of the existing or future rights of the grantor in terms hereof.
- 12.4. Without prejudice to any other provision of this agreement, any successor-in-title, including any executor, heir, liquidator, business rescue practitioner, curator or trustee of either party shall be bound by this agreement.

13. COSTS

Each party shall bear and pay its own costs of or incidental to the drafting, preparation and execution of this agreement.

14. ENTIRE AGREEMENT

It is recorded that this document contains the entire agreement between the parties. There are no notices, announcements or guarantees, whether oral or in writing, given by a party that resulted in the conclusion of this Agreement, save insofar as it is contained in this Agreement. This Agreement correctly reflects the intention of the parties and neither of the parties shall therefore be entitled to apply for rectification thereof, nor shall the contents thereof be subject to renunciation or estoppel.

15. CESSION

- 15.1 The Counterparty hereby cedes to Nu-Pro any debts and receivables that are currently owed to him/her/it, as well as those that may become owing to him/her/it in the future, as security for the proper fulfilment of the Counterparty's obligations towards Nu-Pro, arising from any cause whatsoever and for any amount that is already due and payable or that may become due and payable in the future by the Counterparty to Nu-Pro. This cession is not limited to but includes any amount that may become owing to the Counterparty from the sale of any agricultural products.
- 15.2 The Counterparty may not cede any of his/her/its claims against Nu-Pro arising from the agreement and/or the specific terms to any third party, whatsoever.

16. GRADING

- 16.1.1 All grading, moisture testing, and quality assessments of commodities delivered by the Counterparty shall be conducted at the point of delivery, being the receiving silo, storage facility, or such other designated receiving point.
- 16.1.2 The grading, moisture testing, and quality assessment results issued by the receiving facility or by a grading representative appointed by Nu-Pro shall be final and binding upon the Parties for the purposes of determining the purchase price, including any applicable quality-related discounts, penalties, or premiums.
- 16.1.3 The Counterparty, or its duly authorised representative, shall be entitled to be present during the sampling process. Should the Counterparty or its representative fail to attend at the time of delivery, such failure shall constitute a waiver of any right to challenge or dispute the sampling procedure, the samples taken, or the results derived therefrom.
- 16.1.4 In the event of a dispute concerning the grading, moisture content, or quality assessment of any commodity, only a sealed and properly identified reference sample collected at the time of delivery shall be admissible for purposes of re-testing. Any independent laboratory analysis or re-testing requested by the Counterparty shall be conducted at the Counterparty's sole cost and expense, provided that where the re-test establishes that the original grading or assessment was incorrect by more than five percent (5%), such costs shall be borne by Nu-Pro.